



# भारत का राजपत्र The Gazette of India

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में  
रखा जा सके  
Separate Paging is given to this Part in order that it may be filed as  
a separate compilation

## भाग II—खण्ड 3—उप-खण्ड (ii) PART II—Section 3—Sub-section (ii)

(रक्षा मंत्रालय को छोड़ कर) भारत सरकार के मंत्रालयों द्वारा जारी किए गए संहितात्मक आदेश और अधिसूचनाएं  
Statutory Orders and Notifications issued by the Ministries of the Government of India (other than  
the Ministry of Defence)

### वाणिज्य मंत्रालय

नई दिल्ली, 1 अप्रैल, 1989

का. आ. 592.—केंद्रीय सरकार, निर्यात (व्यापार निरीक्षण और  
निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 17 द्वारा  
प्रदत्त शक्तियों का प्रयोग करते हुए, निर्यात निरीक्षण परिषद् अधिवासी  
भविष्य निधि नियम, 1986 का और संशोधन करने के लिए निम्नलिखित  
नियम बनाती है, अर्थात्:—

1. (1) इन नियमों का संक्षिप्त नाम निर्यात निरीक्षण परिषद्  
अधिवासी भविष्य निधि (संशोधन) नियम, 1989 है।

(2) ये राजपत्र में प्रकाशन की तारीख को प्रवृत्त होंगे।

2. निर्यात निरीक्षण परिषद् अधिवासी भविष्य निधि नियम, 1986  
(जिन्हें इनमें इसके पश्चात् उक्त नियम कहा गया है) के नियम 2 के खंड  
(घ.) में, "महंगाई भत्ता और प्रतिशुल्क महंगाई भत्ता" शब्दों का जोड़  
किया जाएगा।

3. उक्त नियमों के नियम 8 के उपनियम (1) में, "आठ" शब्द के  
स्थान पर "8.33" अंक रखे जाएंगे।

4. उक्त नियमों के नियम 10 के उपनियम (1) में, "आठ" शब्द  
के स्थान पर "8.33" अंक रखे जाएंगे।

[का. सं. 3/12/76—ई आई एण्ड ई पी]

ए. के. चौधरी, निदेशक

टिप्पण:—

मूल नियम का. आ. सं. 3329, तारीख : 27 नवम्बर, 1986  
द्वारा अधिभूत किए गए।

MINISTRY OF COMMERCE

New Delhi, the 1st April, 1989

S.O. 592.—In exercise of the powers conferred by section  
17 of the Export (Quality Control and Inspection) Act, 1963  
(22 of 1963), the Central Government hereby makes the fol-  
lowing rules further to amend the Export Inspection Council  
Contributory Provident Fund Rules, 1986, namely:—

1. (1) These rules may be called the Export Inspection  
Council Contributory Provident Fund (Amendment) Rules,  
1989.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Export Inspection Council Contributory Provident Fund Rules, 1986, (herein after referred to as the said rules) in rule 2, in clause (e), the words "Dearness Allowance and Additional Dearness Allowance" shall be omitted.

3. In rule 8 of the said rules, in sub-rule (1) for the word "eight", the figures "8.33" shall be substituted.

4. In rule 10 of the said rules, in sub-rule (1), for the word "eight", the figures "8.33" shall be substituted.

[No. 3/12/76-EI&EP]

A. K. CHAUDHURI, Director

NOTE : The principal rules were notified vide No. S.O. 3329 dated the 27 Sept., 1986.

### परमाणु ऊर्जा विभाग

बम्बई, 2 जनवरी, 1989

क्रा० आ० 593:—भारत के राजपत्र में तारीख 16-5-81 को प्रकाशित इस विभाग की अधिसूचना सं० क्रा० आ० 1507 में कृपया निम्नलिखित संशोधन करें।

भारती के कालम (1) में "अधिकारी का पदनाम" के लिए पढ़ें

|   |                                       |
|---|---------------------------------------|
| प्रशासनिक अधिकारी (संपदा)               | उप-प्रबन्धक (प्रशासन)                 |
| यूरेनियम कार्पोरेशन आफ इण्डिया लिमिटेड, | यूरेनियम कार्पोरेशन आफ इंडिया लिमिटेड |
| जाकपुर—जादूगुड़ा माइन                   | जाकपुर—जादूगुड़ा माइन                 |
| जिला—सिंहभूम, बिहार।                    | जिला—सिंहभूम, बिहार।                  |

[सं० 4/10 (21) 88—पीएसयू]  
विजय मोहनराम, निदेशक

हृदय भारत के राष्ट्रपति और उनकी ओर से

### DEPARTMENT OF ATOMIC ENERGY

Bombay the 2nd January, 1989

S.O. 593—This Department's notification No. S.O. 1507 Published in the Gazette of India dated 16-5-81 may please be amended in the following manner:—

In Col. (1) "Designation of the Officer" in the Table

| For   | Read                               |
|---|------------------------------------|
| Adm. Officer (Estate)                             | Dy. Manager (Admn.)                |
| Uranium Corporation of India Limited, Post Office | Uranium Corporation of India Ltd., |
| Jaduguda  | P.O. Jaduguda Mines                |
| Mines, District                                   | District                           |
| Singhbhum, Bihar                                  | Singhbhum, Bihar                   |

[No. 4/10(21)/88-PSU]

VIJAYA MOHANRAM, Director  
for and on behalf of the President of  
India

### संचार संचालय

(दूरसंचार विभाग)

नई दिल्ली, 21 मार्च, 1989

क्रा. आ. 594—स्थायी धादेश संख्या 627, दिनांक 8 मार्च, 1960 द्वारा लागू किए गए भारतीय तार नियम 1951 के नियम 34 के खंड III के पैरा (1) (क) के अनुसार, महानिदेशक, दूरसंचार विभाग ने हरियाणा दूरसंचार संचालक के खरखोदा टेलिफोन केंद्र, पंजाब दूरसंचार संचालक के बुद्धगुड़ा टेलिफोन केंद्र, गुजरात दूरसंचार संचालक के अतुल टेलिफोन केंद्र तमिलनाडु दूरसंचार संचालक के बरकितमनागर टेलिफोन केंद्र, केरल दूरसंचार संचालक के कट्टप्पना, मट्टन्नूर और केलकम टेलिफोन केंद्रों, महाराष्ट्र दूरसंचार संचालक के माहाद टेलिफोन केंद्र; तथा मध्य प्रदेश दूरसंचार संचालक के हर्दा टेलिफोन केंद्र में दिनांक 01-04-1989 से प्रमाणित दर प्रणाली लागू करने का निर्णय किया है।

[संख्या 5-1/89-पी. एच. बी.]

पी. आर. काररा, सहायक महानिदेशक (पी. एच. बी.)

### MINISTRY OF COMMUNICATIONS

(Department of Telecommunications)

New Delhi, the 21st March, 1989

S.O. 594—In pursuance of para 1(a) of Section III of Rule 434 of Indian Telegraph Rules, 1951, as introduced by S.O. No. 627 dated 8th March, 1960, the Director General Telecommunications Department, hereby specifies 1-4-1989 as the date on which Measured Rate System will be introduced in Kharkhoda Telephone Exchange under Haryana Telecom. Circle; Budhladah Telephone Exchange under Punjab Telecom. Circle; Atul Telephone Exchange under Gujarat Telecom. Circle; Barkitmanagar Telephone Exchange under Tamil Nadu Telecom. Circle; Kattappana, Mattannur and Kelakom Telephone Exchanges under Kerala Telecom. Circle, Mahad Telephone Exchange under Maharashtra Telecom. Circle, and Harda Telephone Exchange under Madhya Pradesh Telecom. Circle.

[No. 5-1/89-PHB]

P. R. KARRA, Asst. Director General (PHB)

### श्रम मंत्रालय

नई दिल्ली, 7 फरवरी, 1989

क्रा. आ. 595—कर्मचारी राज्य बीमा अधिनियम, 1948, (1948 का 34) की धारा 1 की उपधारा (3) द्वारा प्रवृत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा 16-2-1989 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय 4 (धारा 44 और 45 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है) और अध्याय 5 और 6 (धारा 76 की उपधारा (1) और धारा 77, 79, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है) के उपरान्त तमिल नाडु राज्य के निम्नलिखित क्षेत्र में प्रवृत्त होंगे, अर्थात्:—

"जिला केन्नालपट्टु तालुक सेवापेट में राजम्ब ग्राम मनाली, ईरानापुर और चीन्ना गेल्पाड के अन्तर्गत आने वाले क्षेत्र"

[संख्या एम.-38013/2/89-एम. एम.-1]

ए. के. भट्टाचार्य, अवर सचिव

### MINISTRY OF LABOUR

New Delhi, the 7th February, 1989

S.O. 595.—In exercise of the powers conferred by sub-section (3) of section 1 of the Employees' State Insurance

Act, 1948 (34 of 1948), the Central Government hereby appoints the 16th February, 1989 as the date on which the provisions of Chapter IV (except sections 44 and 45 which have already been brought into force) and Chapters V and VI [except sub-section (1) of section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Tamil Nadu namely :

"Area comprising of resanue village Manali, Eranavoor and Chinna Sekkadu in Saidapet Taluk in Chengalpattu District."

[No. S-38013/2/89-SS. I]

A. K. BHATTARAI, Under Secy.

का. घा. 596—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, समय भारत कोकिंग कोल लिमिटेड का बटदीह कोलियरी के प्रबन्धन में सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (सं. 1), धनबाद के पंचाट को प्रकाशित करती है।

S.O. 596.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 1), Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the Bhatdih Colliery of M/s. Bharat Coking Coal Ltd. and their workmen.

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1 AT DHANBAD

In the matter of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947

Reference No. 49 of 1982

#### PARTIES :

Employers in relation to the management of Bhatdih Colliery of M/s. B.C.C. Ltd.

AND

Their Workmen.

#### APPEARANCES :

For the Employers—Shri B. Joshi, Advocate.

For the Workmen—Shri D. Mukherjee, Secretary Bihar Colliery Kamgar Union.

STATE : Bihar

INDUSTRY : Coal

Dated, the 28th December, 1988

#### AWARD

By Order No. L-20012(2)/82-D.III (A), dated, the 23rd April, 1982, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the demand of the workmen of Bhatdih Colliery, Area No. II of Messrs Bharat Coking Coal Limited, Post Office Mahuda, District Dhanbad that Sarvashri Santoo Mahato, Bidu Roy, Bhimlal Rajak, Suresh Manjhi, Upen Rajwar, Hari Pada Rajwar,

Pooplal Mahato and Rakhilal Dhoba could be reinstated with full back wages is justified? If so, to what relief are the workmen concerned entitled and from what date?"

The case of the sponsoring union, Bihar Colliery Kamgar Union, as appearing from the written statement, bereft of details, is as follows :

S/Shri Santoo Mahato and seven other concerned workmen had been working as underground stone cutters at Bhatdih Colliery for long with unblemished record of service. They along with others has been working regularly in permanent nature of job under the direct control and supervision of the Colliery management. Necessary equipment/impliments necessary for the job of stone cutting were being supplied by the management. As per Mines Act and Rules framed thereunder underground workmen are bound to work under the control, supervision and direction of the competent authority. In spite of the facts stated above the management used to disburse their wages thorough intermediaries only to deprive them from their legitimate wages and other facilities they had rendered continuous services to the colliery for more than 190 days in each calendar year. They and their union demanded their regularisation and payment of wages at par with Central Wage Board Recommendations with retrospective effect. The management, appreciating the legal position, regularised 74 senior most workmen out of 144 workmen. The management stopped them from service without conducting any enquiry and without assigning any reason although they regularised them in 1974. Thus their services were terminated by the management without complying with the mandatory provisions of Section 25-F of the Industrial Disputes Act. They and their Union vehemently protested against the illegal, and arbitrary action of the management. The management assured them of favourable decision and advised them to wait on the ground that the matter was under active consideration of the Head Quarters. Seeing the abnormal delay in sorting out the matter, the union raised an industrial dispute before the A.L.C. (C) for conciliation. The management attended the conciliation proceeding and tried to justify their action on the ground that they were medically unfit. The union assailed the contention of the management on the ground (i) that the report of the alleged Medical Board was not communicated to the concerned workman, (ii) that, even if they were allegedly declared unfit by the Medical Board the management was bound to conduct an enquiry, (iii) that the formal letter of termination stating reason for termination was never served on them and (iv) that every termination spells retrenchment and hence their termination of service in violation of Section 25-F of the Industrial Disputes Act is illegal and void abinitio. The management filed the alleged report of the Medical Board during conciliation proceeding and it was assailed by the union on the ground—(i) that the alleged Medical Report does not bear the signature of the concerned workmen, (ii) that from the alleged Medical Report, it was absolutely impossible to ascertain that the concerned workmen were medically examined and (iii) that the alleged Medical Report declared the concerned workmen medically unfit for the present without mentioning the reason for making them medically unfit and the alleged medical report does not mean that they were unfit for ever. It is alleged that the biased management refused to accept the legal point and thus the conciliation ended in failure. The appropriate Government, after the matter was referred to it, referred the present dispute for adjudication by this Tribunal. It is alleged that the action of the management in terminating the services of the concerned workmen by not regularising them on the alleged ground of medical unfitness was illegal, arbitrary, unjustified and against the principle of natural justice and smacks of anti labour policy of the management. It is claimed that the claim of the concerned workmen for reinstatement in service with full back wages with effect from 1974 is legal and justified.

3. The case of the management of M/s. B.C.C. Ltd., as appearing from the written statement, details apart, is as follows :

The present reference is not legally maintainable. Bhatdih Colliery is having several coal seams and for the purpose of the establishing ingress and outgress

roadways are existing between two different seams as well as between the same coal seams existing at two different levels on account of geological disturbances. Cross measure drifts were used to be driven by contractor. The driving of cross-measure drifts involved stone works and the contractors employed stone cutters for executing their contract work. Stone contract jobs were never continuous or regular as because the driving stone drifts and other stone works were done from time to time depending upon changing mining condition. The erstwhile management used to engage stone contractors as and when required. The contractors were paid either on the basis of per feet progress or per 1000 cubic feet work done.

The contractor used to engage their own workmen according to their requirement as temporary or casual workmen. The contract workers were paid by the contractors who used to exercise control over them and supervise their jobs. There existed no employer-employee relationship between the colliery management and the contractors' workmen. The employment of contract labour was purely temporary for the duration of contract work. Most of the unskilled workman engaged in removing stone obtained after blasting were casual. After nationalisation of coal mines the present management drew up advance plan to carry on prospecting and development work in a phased measure and decided to abolish contract system in stone cutting work in the collieries to the extent possible. The present management of Bhatdih colliery decided to carry on stone cutting work departmentally from 1974 and for that purpose wanted to employ 74 stone cutters on the roll of the company. The matter was discussed with the representative of the union who raised this dispute and it was agreed that 74 workmen would be selected out of 123 stone cutters who had worked in the colliery as contractors' workers on some occasion or others. The names of the concerned workmen were included in the list of workmen for their employment subject to medical fitness of the standard required for stone cutting jobs which are hard manual jobs. The concerned workman did not pass the medical test for their employment. The management selected 74 workmen out of 123 workmen as agreed upon. The concerned workmen were never employee of the present management at any time. They were not given employment in the year 1974 by the management as they were not found suitable for stone cutting job on medical ground. Hence, they have no right for demand for employment after lapse of 8 years. This case is purely gumbling in litigation.

3. In rejoinder to the written statement of the management the union has stated that the present reference is perfectly maintainable. It has been asserted that the stone cutting job is a permanent nature or job and for that reason the Government of India has declared the job as prohibited category of job under the provisions of Contract Labour (Regulation and Abolition) Act. It has been alleged that disbursement of wages through intermediaries was nothing but a legal camouflage. The concerned workmen were legally employees of the management. It has been asserted that the alleged contractor did not possess any licence nor the management was possessing any registration certificate as per Contract Labour (Regulation & Abolition) Act for engaging the concerned workmen. All the alleged contractors workmen were made permanent employees by the management with effect from 1974. It has been further asserted that the concerned workmen were stopped from their duties without assigning any reason and without conducting any enquiry.

4. In rejoinder to the written statement of the union the management has contended that the concerned workmen had worked as contract workmen on casual basis from time to time. It has been denied by the management that the concerned workmen worked under the direct control and supervision of the colliery management and asserted that the contractor supplied the necessary equipments and implements for doing the job of stone cutting. The management abolished

the contract system in 1974 and appointed 74 workmen out of the stone cutters who worked under contractor on some occasion or others. The concerned workmen were not employed by the present management and hence their regularisation did not arise. The management has a right to select best workmen out of the lot available on the basis of suitability for the job. Medical examination and physical fitness is one such factor which is taken into consideration at the time of regularisation of a workmen for a particular job. It has been denied by the management that the concerned workmen were victimised or their services were illegally terminated.

5. The sponsoring union has examined one of the concerned workmen as its sole witness and laid in evidence only one item of document which has been marked as Ext. W-1. On the other hand, the management has also examined only one witness, namely, MW-1 V. R. Joshi, now working as Dy. Chief Personnel Manager, Barora Area and laid in evidence a number of documents which have been marked as Exts. M-1 to M-6.

6. The tenor of the written statement of the sponsoring union is that the concerned workmen were engaged as underground stone cutters by the management of Bhatdih colliery although ex-facie they were engaged through contractor. The case of the management is a complete denial of the fact that they were engaged by the management of the said colliery and there existed no relationship of employer and employee between the management and the concerned workmen since they were engaged by the contractor.

7. Admittedly, the concerned workmen were engaged as underground stone cutters at Bhatdih colliery, prima facie, by the contractor working for the management of the colliery. This apparent circumstance may not be the real position because the presence of intermediate contractors to whom alone the workers have immediate or direct relationship ex-contractor is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, it is found, though draped in different perfect paper arrangement, that the real employer is the management and not the immediate contractor. The guideline as above to decide such cases has been enshrined in decision reported in 1978 L.I.C. 1264-AIR 1978-(SC) 1410.

8. The union, in adumbrating its claim has set forth its case by stating that the job of underground stone cutters is of permanent nature, that the work tools for the concerned workmen were supplied by the management and that they were under the direct control and supervision of the management. The management has of course denied this contention.

It has surfaced in evidence that a large number of workmen employed as stone cutters have been regularised by the management of the colliery. This fact is, prima facie, indicative of the position that the job of stone cutters in the colliery is of permanent in nature. The sole witness for the management is MW-1 V. R. Joshi. He has not denied the fact that the job of stone cutters is of permanent in nature. WW-1 Bhimlal Rajak, one of the concerned workmen, has asserted that the job of stone cutters is of permanent in nature. He has not been cross-examined on this point. He has further stated that the management used to provide them with work tools and mining sirdar, overman and Asstt. Colliery Manager used to supervise their work. He had not been cross-examined as to whether the management used to provide them with work tools or not. He has denied the suggestion that before regularisation of the stone cutters by M/s. B.C.C.I. the stone cutters used to work under the direct control of contractor. MW-1 V. R. Joshi has not stated anything in his evidence to assail the position that the concerned workmen were not provided with work tools by the management or that their work was not under the control and supervision of the management. WW-1 has further stated that they were used to be paid their remuneration from colliery office. Considering these facts and evidence on record I have no hesitation to hold that the concerned workmen were really the employees of the



management of colliery and the management adopted the subterfuge or camouflage of having them drafted for the service of the colliery through contractors.

9. The case of the sponsoring union is that appreciating the legal position the management regularised 74 senior-most workmen out of 144 workmen. But the case of the management is that the management of Bhatdih colliery decided to carry on stone cutting works departmentally from 1974 and for that purpose wanted to employ 74 stone cutters on the roll of the company and the matter was discussed with the sponsoring union and it was agreed that 74 workmen would be selected out of 123 stone cutters who had worked in the colliery as contractor's workers on some occasion or other. There is no vestige of evidence to indicate either that there were 144 stone cutters working in the colliery as asserted by the sponsoring union or 123 stone cutters working in the colliery as claimed by the management. The management in its rejoinder has stated that the management abolished the contract system in the year 1974 and appointed 74 workmen out of the stone cutters who had worked under contract on some occasions or other. Thus, it is seen that the case of the management is that the contract system of engaging stone cutters through contractors were abolished in the year 1974 and 74 stone cutters were appointed as per agreement with the sponsoring union.

10. MW-1 V. R. Joshi now working as Dy. Chief Personnel Manager (Baroda Area) has stated in his evidence that in 1972 a circular was issued by the management to abolish the system of engaging stone cutters through contractor since it was a prohibited category of job. In cross-examination he has further stated that in terms of the circular issued in 1972 the management of Bhatdih colliery abolished the system of work of stone cutting through the contractors. Thus, it appears from the evidence of V. R. Joshi that the system of engaging stone cutters in Bhatdih colliery through contractors was abolished in or about 1972 since it was a prohibited category of job. Hence, the case of the management that the contract system of engaging stone cutters through contractor was abolished in 1974 is not sustainable. Sri Joshi has stated that Ext. M-1 contains the list of stone cutters submitted by the contractor. In cross-examination he has admitted that Ext. M-1 was prepared by the management on the basis of list submitted by the Contractor. Document Ext. W-1 is the list of contractor's workers of Bhatdih colliery and it contains 74 names while Ext. M-1 contains only 66 names. It appears from the medical examination report of workers under contractor of Bhatdih colliery dated 18-1-74 (Ext. M-3) that the concerned workmen were found medically unfit at present. It further appears from Ext. M-4 that seven other workmen were sent for medical examination on 18-1-1974 and that they were recommended for employment in place of the concerned workmen who were allegedly found unfit (Ext. M-5). H. N. Tripathy, Sub-area Manager, by his letter dated 18-1-74 to the Manager, Bhatdih colliery informed that 66 stone cutters were to be departmentalised for underground jobs upon being declared medically fit (Ext. M-1) and the names of the concerned workman should be removed from the list as they were found medically unfit (Ext. M-6) and that in place of the concerned workmen seven other workmen as per list (also Ext. M-6—Annexure-III) who were found medically fit should be allowed to work with immediate effect.

11. It is claimed by the management that these 73 workmen were departmentalised and deployed for underground jobs as stone cutters in Bhatdih colliery with effect from 18-1-1974 on the basis of an agreement with the sponsoring union and also on the basis of their physical fitness as determined by the Medical report. Sri V. R. Joshi has stated that Ext. M-2 is the minutes of discussion with the union. This minute of discussion reveals that as many as nine persons including H. N. Tripathy, Sub-area Manager, S. Verma, Administrative Officer, Security Force and S. Khan, Officer-in-charge, Mohuda out-post were present at the discussion and that C. S. Hazari, Attendance Clerk, Member of B.C.K. Union and Javed Mian, Local Secretary of B.C.K.U. (sponsoring union) were present in the discussion. This minutes further reveals that Idrish Mian stated that he checked the list of 74 persons and that C. S. Hazari stated that medical examination of these persons should be held on 10-1-1974. But this

minute of discussion does not reflect the signature of any one of the persons present at the time of alleged discussion. In the circumstances this piece of document cannot be treated as an agreement or settlement between the employers and the employees. The management has again relied on another minute of discussion (Ext. M-5) where as many as four persons, namely, H. N. Tripathy, V. R. Joshi, Idrish Mian and C. S. Hazari were allegedly present. The minute runs as follows :

"The union checked the medical report and found it correct.

It has been decided that the eight persons should be taken on seniority basis from the existing strength of stone cutters and masonry work in place of the persons who are medically unfit. The names are given below for employment in place of medical unfit :

- (1) Karmo Dome
- (2) Etwari Rewani
- (3) Bigoo Munda
- (4) Sahdeo Das
- (5) Kokil Teli
- (6) Upen Gope
- (7) Moniruddin Mian.

It has been decided that all persons should be allowed from 19-1-74 positively who have been found fit for medical examination." This minute of discussion bears the signature of Chandra Sekhar Hazari and Idrish Mian, but their designations have not been written there. This minute does not bear the signature of any person from the employer's side. Sri V. R. Joshi has stated that C. S. Hazari was the member and Idrish Mian was local Branch Secretary of B. C. K. Union at the relevant time.

12. In view of these evidence Sri B. Joshi, Advocate has contended that this minute of discussion reflects agreement/settlement with the sponsoring union for departmentalisation of 74 workmen employed by the contractor for underground jobs in Bhatdih colliery. It has surfaced in evidence that actually 73 workmen of the category of stone cutters were departmentalised and not 74. However, as I have stated before that the minute of discussion (Ext. M-2) does not bear the signature of any persons present in the discussion. That being so, this minute cannot be treated as an agreement or settlement. The second minute of discussion (Ext. M-5) does not bear the signature of the employer represented by the Agent, Manager or other principal Officer; it bears the signatures of C. S. Hazari, Member and Idrish Mian, local Branch Secretary of the sponsoring union. Rule 58 of Industrial Disputes (Central) Rules, 1957 envisages that a settlement arrived at in the course of conciliation proceeding or otherwise shall be in Form 'II' and the settlement shall be signed by—

- (a) in the case of an employer by the employer himself or his authorised Agent, or when the employer is an incorporated company or other body corporate, by the Agent, Manager, or other principal officer of the Corporation; and
- (b) in the case of the workmen, by any officer of a trade union of the workmen or by five representatives of the workmen duly authorised in this behalf at a meeting of the workmen held for the purpose.

By way of explanation 'officer' in this rule means any of the following officers, namely :—

- (a) the President ;
- (b) the Vice-President ;
- (c) the Secretary (including the General Secretary);
- (d) a Joint-Secretary ;
- (e) any other officer of the trade union authorised in this behalf by the President and Secretary of the Union.

The minute of discussion has not been signed by any of the officers of the union. There is no evidence on record that C. S. Hazari and Idrish Mian were authorised by the President and the Secretary of the union to arrive at a settlement or agreement with the management over the issue. In the circumstances I am constrained to hold that the minute of discussion cannot be treated as settlement or agreement between the employer and the employee.

13. It appears that the concerned workmen were not considered for departmentalisation on the basis of medical report. I have already pointed out that in the medical report they were found unfit at present. Thus, it is seen that they were found medically unfit for the time being even if it is considered to be a medical report (Ext. M-3).

14. Shri D. Mukherjee appearing for the sponsoring union has assailed the medical report assiduously. He has contended that (i) the medical report does not bear the signature of the concerned workmen, (ii) no basic data was provided in the medical report for the alleged unfitness of the concerned workman and (iii) that the doctor who found them medically unfit for the present has not been examined.

True, indeed the medical does not provide the basic data for declaring the concerned workmen unfit for departmentalisation. The author of this medical report has not been examined by the management. The medical report was also not signed by the concerned workmen. Besides, there is no evidence that the medical report was communicated to the concerned workmen. Considering these facts and circumstances I have no hesitation to hold that reliance cannot be placed upon this medical report. The concerned workmen, as I have stated before, was really the employees of the Bhatdih colliery though they were engaged through the camouflage of contractor. In the circumstances, they have got a right for departmentalisation consequent upon abolition of contract labour as it was declared a prohibited category of job. In the context of these facts and circumstances the concerned workmen have a right to know the medical report declaring them unfit and dis-entitling them for departmentalisation. But since the management did not communicate to them the adverse medical report and did not give them a right of hearing it has violated the principle of natural justice only.

15. From my discussion above it is evident that the concerned workmen have got a right for departmentalisation from the date their other co-workers were departmentalised i.e. with effect from 19-1-1974 as appearing from Ext. M-5. Since they were not departmentalised the management is bound to pay them back wages from that date.

16. Accordingly, the following award is rendered—the demand of the workmen of Bhatdih colliery, Area No. II of M/s. B.C.C. Ltd. that the concerned workmen should be re-instated/departmentalised is justified. The management is directed to departmentalise them with effect from 19-1-1974, if not otherwise barred, and to pay them full back wages.

In the circumstances of the case I award no cost.

S. K. MITRA, Presiding Officer  
[No. L-20012/(2)/82-D.III(A)/IR(Coal-I)]

का. प्रा. 597.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्वये में, केन्द्रीय सरकार, मैसर्स भारत कोकिंग कोल लि. का लोयाबाद कोलियरी, के प्रबन्धन में सम्बद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निरिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (सं. 1), धनबाद के पंचाट को प्रकाशित करती है।

S.O. 597.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, (No. 1), Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the Loyabad Colliery of M/s. Bharat Coking Coal Limited and their workmen.

## ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD

In the matter of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947

Reference No. 64 of 1983

#### PARTIES :

Employers in relation to the Management of Loyabad Colliery of M/s. B.C.C. Ltd.

#### AND

Their Workmen.

#### APPEARANCES :

For the Employers : Shri G. Prasad, Advocate.

For the Workmen : None.

STATE : Bihar.

INDUSTRY : Coal.

Dated, the 18th January, 1989

#### AWARD

The present reference arises out of Order No. L-20012(131)/83-D.III(A), dated, the 3rd September, 1983 passed by the Central Government in respect of an industrial dispute between the parties mentioned above. The subject matter of the dispute has been specified in the schedule to the said order and the said schedule runs as follows :

"Whether the action of the Management of Loyabad Coke Plant of Messrs. Bharat Coking Coal Limited, Dhanbad in not regularising the 72 workers listed in the Annexure below as Crusher Workers from 1-1-1979 is justified? If not, to what relief are they entitled?"

#### ANNEXURE

Sl. No. Name

1. Dhanrajiya Chouhan
2. Surajmunia Chouhan
3. Kapil Chouhan
4. Deobarti Chouhan No. 1
5. Kultiya Chouhan
6. Bideshi Bhuia
7. Kunti Beldarin
8. Manwa Chouhan No. 2
9. Barti Chouhan No. 2
10. Dhandularia Chouhan
11. Tapeshari Chouhan
12. Deopatia Chouhan No. 1
13. Raj Ballabh Chouhan
14. Mathuri Chouhan
15. Jalpariya Nonia
16. Bhagiya Bhuinl
17. Menakawa Pasin
18. Sarotawa Chouhan

19. Parbatia Chouhan No. 3
20. Munia Chouhan
21. Manwa Chouhan No. 1
22. Dhanpatiya Debi
23. Punia Debi
24. Sugia Chouhan
25. Sahodari Debi
26. Dhanrajwa Chouhan No. 2
27. Govind Pashi
28. Gouri Pashi
29. Chandra Deo Chouhan
30. Parbatia Chouhan No. 2
31. Raj Kunwar Chouhan
32. Manwa Chouhan No. 3
33. Kumari Bharin
34. Lachhuman Chouhan
35. Koshilwa Chouhan No. 5
36. Anarwa Chouhan
37. Tara Muni Pashin
38. Mukhwa Chouhan
39. Jamuni Chouhan
40. Basmatiya Chouhan
41. Surya Deo Dusadh
42. Jhumia Chouhan
43. Koshilwa Chouhan T. No. 31795
44. Fuliya Khatun
45. Rajmaniya Chouhanin No. 2
46. Dhanwa Chouhan
47. Mahabir Nonia
48. Kalpatia Chouhan No. 1
49. Dulariya Noniain
50. Lagan Barti Chouhan
51. Chinta Chamain
52. Sonbarti Noniain
53. Pyari Devi
54. Muneshwari Pasin
55. Sonmatia Noniain
56. Shanti Pasin No. 1
57. Mitli Chouhan
58. Dhanrajawa Chouhan
59. Indari Chouhan
60. Karmi Chamain
61. Kalpatia Chouhan-II
62. Sabitri Chouhan
63. Parbatia Chouhan
64. Barti Chouhan
65. Lilwa Nonia
66. Surujmani Kamin

67. Keshiya Bhuini
68. Kumaria Bhuini
69. Mudawa Bhuini
70. Ashwa Chouhan
71. Barli Pasnin
72. Lachhani Chouhan.

2. The dispute has been settled out of Court. A memorandum of settlement has been filed in Court. I have gone through the terms of settlement and I find them quite fair and reasonable. There is no reason why an award should not be made on the basis of terms and conditions laid down in the memorandum of settlement. I accept it and make an award accordingly. The memorandum of settlement shall form part of the award.

3. Let a copy of this award be sent to the Ministry as required under section 15 of the Industrial Disputes Act, 1947.

S. K. MITRA, Presiding Officer  
[No. L-20012/131/83-D.III(A)/IR (Coal-I)]

BEFORE THE PRESIDING OFFICER CENTRAL  
GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1  
DHANBAD

Ref. No. 64 of 1983

#### PARTIES :

Employers in relation to the Management of Loyabad  
Colliery of M/s. B.C.C.L

AND

Their workmen

The humble joint petition of compromise on behalf of the parties.

Most respectfully sheweth :—

(1) That the Central Government by notification No. L-20012(131)/83-D-III(A) dt. 3rd September, 1983 has referred the Industrial Dispute as per schedule noted for an adjudication under Sec. 10(1)(d) of Industrial Dispute Act, 1947 (14 of 1947) here and after referred to as the act, to this Hon'ble Tribunal.

#### SCHEDULE

"Whether the action of management of Loyabad Coke Plant of M/s. B.C.C.L. Dhanbad in not regularising the 72 workers listed in the Annexure below as Crusher workers from 1-1-1979 is justified. If not, to what relief are they entitled ?

(2) That the parties discussed the dispute out side the court and after going through the facts of the case it was agreed to settled the case out of court on the following terms and condition.

#### Terms of settlement

- (1) That the concerned 72 workmen will be placed in Cat.I (Time Rate) with 2(two) increments in the scale of Cat. I i.e. Rs. 22.02 per day with retrospective effect from 1-1-83.
- (2) The concerned workmen will be entitled to annual increment on 1st day of Jan. 84 onwards.
- (3) That their pay fixation will be done as on 1-1-83 and back wages arising out of such fixation will accrue from the date of reference i.e. 3-9-83 except in the case of 4 casual workmen whose status will be verified by the Joint Committee and if it is found that they have acquired the status of permanent workman their case will be considered at par with

others otherwise no benefit of pay fixation will be given as stated hereinabove.

- (4) That the settlement settles all the dispute between the parties and the workmen shall have no claim whatsoever.
- (5) That the settlement is fair and proper.
- (6) That it was also agreed that joint petition of compromise should be filed before the Hon'ble Central Government Industrial Tribunal and Hon'ble Tribunal should be requested to pass an award in terms of settlement.

It is, therefore, prayed that your honour may be graciously pleased to accept the settlement and pass award in terms of settlement for this act of kindness the parties shall ever pray.

Representing workmen

Representing Employer

(1) Sd/- Illegible (1) Sd/- Illegible

(2) Sd/- Illegible (2) Sd/- Illegible

Witnesses :

Sd/- Illegible

Advocate

Sd/- Illegible

Part of the Award.

Sd/- Illegible

का. प्रा. 598.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, संसद भारत कोकिंग कोल लिमिटेड का लाइकीह डीप कोलियरी के प्रबन्धन में सम्बद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिनियम (चं. 2), अनुवाद के पंचाद को प्रकाशित करती है।

S.O. 598.—In pursuance of section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 2), Dhanbad as shown in the Annexure in the Industrial dispute between the employers in relation to the Laikdih Deep Colliery of M/s. Bharat Coking Coal Limited and their workmen.

#### ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

Reference No. 116 of 1986

In the matter of an industrial dispute under Section 10 (1)(d) of the I.D. Act, 1947.

#### PARTIES :

Employers in relation to the management of Laikdih Deep Colliery of M/s. Bharat Coking Coal Limited and their workmen.

#### APPEARANCES :

On behalf of the workmen : None.

On behalf of the employers : Shri R. S. Murthy, Advocate.

STATE : Bihar

INDUSTRY : Coal

Dated, Dhanbad, the 19th January, 1989

#### AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012 (278)/85-D.III(A), dated, the 26th February, 1986.

#### SCHEDULE

"Whether the grievance of the Colliery Karamchuri Sang are justified that the management of Laikdih Deep Colliery of M/s. Bharat Coking Coal Limited have imposed the allegedly maximum and excessive punishment of dismissal from service on their workman Shri B. S. Mehra, Magazine Clerk, when a criminal case over the complaint lodged by the management with the police regarding shortage of detonation in his charge in January, 1982 is said to be pending decision in a court of law? If so, to what relief, if any is the workman concerned entitled?"

The case of the management is that the concerned workman Shri B.S. Mehra was working as Magazine Clerk in Laikdih Deep Colliery of M/s. B.C.C.L. His duties and responsibilities included the custody, issue and return of explosive detonators and maintaining of all the relevant registers in respect of explosive and detonators. On 27-1-82 the Explosive Inspector had come to the management's office for inspection of the explosive materials of the colliery. The Manager of the colliery called Shri J. K. Banerjee, Subordinate Mining Engineer to go to the colliery Magazine with the concerned workman and to see that all the records and the explosive materials were in order and to submit a report to him so that during the inspection of the explosive Inspector no defect is found in the Magazine. Shri B. S. Mehra was searched but could not be found. When the concerned workman was not found on duty physical verification of the stock of the explosive/detonators and the records were taken by a team of 2 officers namely Shri J. K. Banerjee and Shri S. N. Rana and it was detected by them on breaking open the detonators box that the box contained 1500 detonators only instead of 2500 detonators. Thus there was shortage of 1000 detonators in the box. Further on checking the relevant records and verifying the materials it was found that there was shortage of 1953 Nos. of detonators and that the records were not regularly maintained and was not up-to-date. A note regarding the explosive position at Laikdih on 29-1-82 was prepared under Shri J. K. Banerjee and Shri S. N. Rana and store keeper Shri S. C. Bose they all signed on the said statement. Thereafter the concerned workman was issued with chargesheet dated 4-2-82 by the Manager of the colliery for misconduct under clause 17(1)(a)(c) and (i) of the certified Standing Orders of the colliery. The concerned workman submitted his explanation to the charge sheet which was duly considered by the management. The Supdt. Agent of the colliery found the explanation of the concerned workman unsatisfactory and thereafter he appointed by his letter dated 22-3-83 Shri R. K. Mukherjee Senior Personnel Officer Laikdih Deep Colliery as Enquiry Officer under intimation to the concerned workman to conduct the Enquiry. Shri J. K. Banerjee, Subordinate Mining Engineer was appointed as Presenting Officer.

The enquiry officer held the enquiry after due notice to the concerned workman in which the concerned workman to the assistance of a co-worker. The witness of the management were examined in presence of the concerned workman and he was given full opportunity to cross-examine the management's witnesses. The concerned workman gave his own statement but he declined to examine any witness in his defence. After conclusion of the enquiry the enquiry officer submitted his enquiry report dated 14-2-83 holding the concerned workman guilty of the charge frame against him. The report of the enquiry officer was considered by the Agent, Laikdih Deep Colliery who agreed with the finding of the enquiry officer and came to the conclusion that it was a fit case for dismissal of the concerned workman

from service. The case file was subsequently submitted to the GM|CME Chanch Victoria Area of BCCL in which Laikdih Deep Colliery falls and he approved the dismissal of the concerned workman. Thereafter the concerned workman was dismissed from service vide letter dated 20/21-2-84 issued by the G.M.|CME Chanch Victoria Area of BCCL. The domestic enquiry was held in accordance with the principles of natural justice and all possible and reasonable opportunities were given to the concerned workman to defend himself. Taking the gravity of misconduct proved against the concerned workman the action of dismissal taken by the management is justified. Explosives and detonators are extremely dangerous materials which can be used by anti-social and anti-national elements for manufacture of bombs etc. and this aspect was also considered in passing the final order of the concerned workman. On the above facts it has been prayed on behalf of the management that the reference be answered in favour of the management.

The case of the workman is that the concerned workman had been working as permanent employee as Magazine clerk. He was chargesheeted for alleged shortage of some detonators from the Magazine of Laikdih Deep Colliery of M/s. BCCL. The concerned workman replied to the chargesheet denying the allegation. The management also instituted a criminal case against the concerned workman and the said criminal case was pending. The management conducted a fare and perfunctory enquiry and against the principles of natural justice and on the basis of perverse finding dismissed the concerned workman from service. The concerned workman was not allowed to be represented through a competent person to defend in the enquiry. There was no material or evidence to hold the concerned workman guilty of the charge. The punishment of dismissal is too harsh and excessive which is illegal and unjustified specially when a criminal case on the same allegation was pending in a criminal court. On the above plea it has been prayed that the order of his dismissal is set aside and he may be reinstated with full back-wages.

In para 8 of the W.S. of the management it was submitted that the concerned workman has been dismissed from service after holding an enquiry into the charges levelled against him and as the workmen are disputing about the fairness and validity of the domestic enquiry it may be decided in the first instance whether the domestic enquiry held against the concerned workman was fair, proper and in accordance with the principles of natural justice. Accordingly the Tribunal took up for hearing at the first instance whether the domestic enquiry held into the charges against the concerned workman was fair and proper and in accordance with the principles of natural justice. The Tribunal by its Order dated 27-11-88 held that the enquiry into the charges against the concerned workman was fair, proper and in accordance with the principles of natural justice and thereafter fixed the case for hearing on merit on the materials which were already on the record of the enquiry proceeding.

Now the points for decision are (1) whether the punishment of dismissal of the concerned workman was justified when a criminal case was lodged by the management with the police regarding shortage of detonators and the same was pending decision, (2) whether the charge against the concerned workman was established in the domestic enquiry and (3) and whether the punishment of dismissal of the concerned workman from service was justified or was excessive.

The management produced all the relevant documents in connection with the enquiry proceeding and they are marked Ext. M-1 to M-14 in this case.

#### Point No. 1

It is generally desirable that when the incident giving rise to a charge framed against a workman in a domestic enquiry is being tried in a criminal court the employer should stay the domestic enquiry pending the final disposal of the criminal case as in such cases it becomes unfair to compel the workman to disclose the defence which he may take before the

criminal court. But to say that the domestic enquiry should be stayed pending criminal trial is very different from saying that if an employer proceeds with the domestic enquiry in spite of the fact that the criminal trial is pending the enquiry for that reason alone is vitiated and the conclusion reached in such an enquiry is either bad in law or malafide. On perusal of the entire proceeding it will appear that the concerned workman had not prayed for stay of the domestic enquiry even if the concerned workman had prayed for the stay of the domestic proceeding and the management proceeded with the domestic enquiry, the workman cannot have grievance so as to come to a conclusion that the entire enquiry proceeding has been vitiated on account of the fact that a criminal proceeding was ending in respect of the same matter which was involved in the domestic enquiry. There are several decision to that effect and for example I would refer to a decision reported in AIR 1965 Supreme Court Page155 (Tata Oil Mills Co.vrs. its workmen). I hold therefore that the pendency of the criminal case in itself cannot vitiate the punishment of dismissal of the concerned workman. It has to be seen whether the charge had been established by the management in the domestic enquiry.

#### Point No. 2

On perusal of the enquiry proceeding Ext. M-10 it will appear that the management examined PW-1 Shri J. K. Banerjee, PW-2 Shri S. N. Ram, PW-3 Shri N. C. Roy, PW-4 Shri Basir Ahmed, PW-5 Shri S. S. Bose and PW-6 Shri K. D. Sood before the Enquiry Officer to establish the charge against the concerned workman. The concerned workman also gave his statement before the enquiry officer but declined to adduce any witness in the defence. Ext. M-8 is the charge sheet dated 4-2-82 which also contains the statement regarding the explosive position at Laikdih Magazine on 29-1-82 as checked by Shri J. K. Banerjee, S. N. Rana and S. C. Bose. Ext. M-9 is the reply to the chargesheet by the concerned workman. He has stated in his explanation to the chargesheet that he is employed as Magazine clerk in Laikdih Deep Colliery. On 27-1-82 he got suddenly pain in his stomach after he had issued some explosive substance from the Magazine. He has stated that he handed over key magazin and the registers stock register to the helper Kewat and told him to hand over the key and the stock register to the person to whom the same is handed over and there after he left the colliery for his quarter. He has stated that thereafter his family members took him to his father and thereafter his father got him treated. He has further stated that the explosive materials were in order in the magazine when he had handed over the key and the register of the Magazine. Thus the defence of the concerned workman is that after attending his duty for some time in the magazine on 27-1-1982 he had left for his quarter as he was sick. Admittedly he had not taken permission from any authority to leave the magazine.

Now, let us look to the statement of the witnesses examined before the enquiry officer. The First witness examined before the Enquiry officer was Shri J. K. Banerjee subordinate Mining Engineer. He has stated that the concerned workman as Magazine Clerk of Laikdihdeep colliery was looking after the issue and return of explosive at the magazine and was also responsible for taking delivery of the explosive from the suppliers and for that the concerned workman had to maintain all records and challans etc. He has stated that the concerned workman used to keep the account of the explosives which used to be sent to other collieries and all those records were being maintained by the concerned workman. The Magazine clerk is supposed to report in case of any irregularities of explosives in the Magazine to the Safety Officer or to the Manager. He has stated that on 27-1-1982 he alongwith other officers were informed that the Inspector of Explosive had come to the Manager's office and then the Manager Shri K. D. Sood (MW-6) called him and Shri S. N. Ram, PW-2 to go to the colliery magazine with the concerned workman and to see all the records as well as the Magazine and to submit the report to him so that everything was allright in the magazine before the explosive Inspector visits the Magazine. MW-1 made enquiries about the concerned workman on 27-1-1982 but he was not found in the colliery. Thereafter MW-1 asked Shri M. N.

Rai MW-2, Asstt. Magazine clerk, MW-5 Shri S. C. Bose, Store keeper and MW-4 Shri Basir Ahmed Sampling Assistant to accompany him to the magazine and accordingly they accompanied MW-1 to the magazine MW-3 N. C. Roy and MW-5 Shri S. C. Bose opened the magazine and physical verification of the stock was made by them and they recorded the number of explosives and cartridges as mentioned in the explosive box before accounting the explosive. He further stated that the number and quantity of detonators was recorded. They also checked a new detonators box which was fully intact and they found that instead of 2500 detonators there was only 1500 detonators. Thus there was shortage of 1000 detonators in the said box. He has stated that they took the records and went to the auxiliary magazine. He had also verified everything in the magazine for taking into account with the issue and return of explosive and detonators. He has stated that after verifying in the main Magazine and auxiliary magazine they came to the office and started verification of the stock register binacards, issue register including transfer of explosive to other collieries and also the receipt register. He has stated that after thorough checking and physical verification of the records they found total shortage of detonators by 1953 from the actual stock of cartridges. He has stated that they prepared a detailed report about the position of explosives and cartridges and detonators of the colliery magazine and it was signed by Shri S. N. Rana, J. K. Banerjee, S. C. Bose and N. C. Roy. It was also detected at the time of verification that the records maintained by the concerned workman was found to be very irregular and not up-to-date. The concerned workman also stated in his statement before the Enquiry Officer that he did not maintain the register on 26-1-1982 and onwards although he did other jobs. The concerned workman stated that he could not enter in the register regarding supply of explosive to outside colliery. It is thus admitted that although the concerned workman had worked for sometime on 27-1-1982 he had not made the necessary entries regarding the explosive position after 25-1-1982 MW-1 was cross-examined by the co-worker of the concerned workman in which it was revealed that the preliminary enquiry by MW-1 and others started on 27-1-1982 and continued till 29-1-1982 and their report was submitted to the Manager on 30-1-1982. MW-1 clearly stated in his cross-examination that the physicals took was counted on 29-1-1982 and that the key of the magazine was supplied for opening magazine by N. C. Roy, Asstt. Magazine Clerk and the lock of the magazine was opened by Shri N. C. Roy in presence of Shri S. C. Bose, Store Keeper. There is nothing in the cross-examination of MW-1 to show that his deposition was false. The shortage figures of explosives and detonators were given in the statement signed by MW-1, MW-2 and MW-5. Thus witness MW-2 and MW-5 in whose presence the statement was prepared have supported about the shortage as reported in the statement of the explosive position on 29-1-1982 forming part of the chargesheet.

MW-2 Shri S. N. Rana, Safety Officer had also signed on the explosive position on 29-1-1982. He has stated that he was instructed by the Manager, MW-6 Shri K. D. Sood to check the physical stock of the magazine along with Shri J. K. Banerjee on 28-1-1982. According to the said instruction he along with MW-1, MW-5 and MW-2 checked the physicals took of the magazine on 29-1-1982 and checked the contents of the explosive box after opening it and they also checked the two boxes of detonators and explosive cartridges. He has stated that after checking they came to the colliery office and checked statutory books and statutory registers and noticed shortage of explosive cartridges and detonators. He did not remember the quantity of shortages of the cartridges and detonators. But from the facts that he had signed on the statement of the explosive position it is clear that the figures as shown in it were correct as it bears the signature of MW-2. The next witness MW-3 N. C. Roy, Asstt. Magazine Clerk stated that he was present when the magazine was checked by Shri J. K. Banerjee and others and he stated that they checked the number of explosive cartridges and detonators in the magazine and they also checked the records maintained for the magazine at the colliery. He stated that he counted the detonators and told that each box of detonators contains 2500 or 2000 number of detonators in one box. He stated that one of the boxes was opened in his presence which was sealed and on opening 1500 detonators were found contained in it instead of 2500

detonators. He also stated that the number of cartridges were counted by him and he reported to the officer who were present at the time of verification. He has stated that the records of the magazine were maintained by the concerned workman and the concerned workman was not present at the time and others stated that he found the shortage in the magazine. He has stated that the statutory records were also checked in his presence and report was prepared over which he signed. He has also stated that the concerned workman was not present on 27-1-1982 and the records of the explosive materials was not completed by the concerned workman.

MW-4 Basir Ahmed Sample Assistant stated that he was taken by Shri J. K. Banerjee, H. N. Rana and N. C. Roy to the magazine and was asked to count the detonators and explosives in the magazine. He has stated that he counted the number and relayed the numbers to Shri J. K. Banerjee and Shri Rana. He learnt at that time that there was shortage of detonators from the box. He was cross-examined on behalf of the concerned workman and stated that the concerned workman was not present during accounting of explosive. MW-5 Shri S. C. Bose Store Keeper who was present at the time of checking alongwith Shri J. K. Banerjee and others stated that he found the shortage in the stock at the time of physical accounting on 29-1-1982 and he also found 1500 detonators in the sealed box instead of 2500 detonators. He has stated that the concerned workman was not present at the time of verification and he was also not available in the colliery. He stated that the report was made after verification of the magazine and that both physical stock and records were verified and he signed alongwith others on the actual position found by them. He did not remember the exact number and the quantity of shortage of the explosive materials but that was quite natural and for that reason he could not be disbelieved as admittedly he had signed in the explosive position prepared on 29-1-1982.

The last witness examined on behalf of the management was Shri K. D. Sood, Manager MW-6. He stated that the Controller of explosive Shri Malhotra visited the Mine on 27-1-1982 at about 9.30 A.M. for checking the stock of explosive register and record. He asked to locate the concerned workman but he could not find the concerned workman in the colliery or his quarter and as such the Controller of Explosive could not check the magazine upto 2.30 P.M. and left the place directing MW-6 to send the records to his Aransol Office for checking along with the Magazine Clerk. He has stated that on 28-1-1982 the concerned workman was again searched but he was not traced and then MW-6 asked Shri J. K. Banerjee and others to check the magazine regarding physical stock and stock book which was checked on 29-1-1982 and a report was submitted to him on 30-1-1982. He has stated that he submitted a FIR on 30-1-1982 to the Local Police authorities showing the shortage of the explosives. He has stated that inspite of information given to the union leaders the concerned workman could not be produced.

Except MW-1 Shri J. K. Banerjee and MW-4 Basir Ahmed the cross-examination of other MWs was delined by the concerned workman and his co-worker and as such the evidence of the management's witnesses remained in tact. No suggestion was made to the management's witnesses as to why they would depose falsely against the concerned workman. It appears from the evidence in the case that when the Controller of explosive Shri Malhotra came directly to the magazine to check the stock and the registers the concerned workman left the colliery so that the controller of explosive may not check the stock of the explosive and the statutory registers as he knew fullwell that there was shortage of stock and that the registers were incomplete. The concerned workman if really he had become sick could have asked some of the officers available in the colliery for leave or would have filed a petition of or leave on the ground of his illness but the fact that he did not inform any authority or file any petition for leave shows that he had unauthorisedly left the colliery for fear of being detected regarding shortage of the explosive material and irregular maintenance of the scheduled registers by the Controller of explosives. Moreover, the concerned workman should have atleast supplied his address and whereabouts but the fact that he did not in-

form for about 3 months shows that the concerned workman had deliberately avoided so that his whereabouts may not be known.

The concerned workman in his statement has stated that he could have explained the shortage and irregular maintenance of records. So far the irregular maintenance of records is concerned it will appear that the concerned workman had worked till sometime on 27-1-1982 but he had not maintained records of the explosive materials and issue and receipt after 25-1-1982. So far explanation of the stock position is concerned, the concerned workman had sufficient opportunity to explain in the domestic enquiry but he failed to explain the shortage of explosive materials of which he was incharge. In view of the evidence discussed above I hold that the management has been able to establish that the concerned workman being incharge of the explosive materials as Magazine clerk has failed to maintain the proper account of the explosive materials in the statutory records and that shortage of the explosive material was found in the magazine as stated in the chargesheet. The management therefore has been able to establish the charge of mis-conduct under clause 17 1 (a)(c) and (i) of the Certified Standing Orders of the colliery.

#### Point No. 3.

It has already been found above that there was shortage of detonators and cartridges in the magazine of which the concerned workman was incharge. The shortage of explosives materials from the magazine was of grave consequences. We are quite aware that explosive materials obtained in such a clandestine manner is usually utilised in the manufacture of bombs used by the anti-national and anti-social elements of our country and as such the shortage of such materials from the stock of the magazine cannot be taken lightly. It does not only relate to the loss of such materials to the colliery but it causes grave concern in the sense that the explosive material so obtained may be used by the anti-social and anti-national element causing widespread disturbance to individual the public at large and the nation itself. In this view of the matter the dismissal of the concerned workman from services does not appear to me to be at all severe or that the concerned workman should be punished lightly.

In the result, the grievance of the Colliery Karamchari Sangh that the management of Laikdh Deep Colliery of M/s. BCCL have imposed maximum and excessive punishment of dismissal from service on the concerned workman Shri B. S. Mehra, Magazine Clerk when a criminal case over the complaint lodged by the management with the Police regarding shortage of detonators pending decision in a court of law is not at all justified and accordingly the concerned workman is entitled to no relief.

This is my Award.

I. N. SINHA, Presiding Officer.

[No. L-20012(278)/85-D.III(A)/IR (Coal-1)]

का. भा. 599.—प्रयोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, मैसर्स इंडियन आईरन एंड स्टील कं. लि. का नूनोदीह जीतपुर कोलियरी के प्रबन्ध-सूचक से सम्बन्धित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट प्रयोगिक विवाद में केन्द्रीय सरकार प्रयोगिक अधिकरण, (सं. 1) धनबाद के पंचाट को प्रकाशित करती है।

S.O. 599.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 1) Dhanbad, as shown in the Annexure in the industrial dispute between the employers in relation to the Noonidih Jitpur Colliery of M/s. Indian Iron & Steel Company Limited and their workmen.

## ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947

Reference No. 82 of 1984

#### PARTIES :

Employers in relation to the management of Noonidih Jitpur Colliery of M/s. Indian Iron and Steel Company Limited.

#### AND

Their Workmen

#### APPEARANCES :

For the Employers—Shri R. Mohan, Personnel Manager.

For the Workmen—Shri P. B. Chowdhury, President, Colliery Staff Association.

STATE : Bihar.

INDUSTRY : Coal.

Dated, the 29th December, 1988

#### AWARD

By Order No. L-20012(282)/84-D.III(A), dated the 25th October, 1984, the Central Government in the Ministry of Labour had, in exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

“Whether the demand of Colliery Staff Association for proper fitment of pay in respect of S/Shri S. Goswami, C. M. Chacko, S. N. Chakravarty, M. Dey, A. K. Roy, P. K. Acharya, H. S. Ganguli and U. K. Jha with retrospective effect by the management of Noonidih Jitpur Colliery of M/s. Indian Iron & Steel Co. Ltd., is justified? If so, to what relief these workmen are entitled?”

2. The case of the concerned workmen as appearing from the written statement submitted by the sponsoring union, Colliery Staff Association, Noonidih (Gopal Ghar), P. O. Patherdih, District Dhanbad, details apart is as follows :

Jitpur Colliery and its sister collieries, Chasnala and Ramnagar are under the same owner and inter-collieries transfers are in vogue. These collieries belong to M/s. IISCO, and for various mis-management the steel factory of the company and collieries were taken over by the Government and put under Energy Ministry, Department of Steel, Government of India. All the collieries of M/s. IISCO are coking coal mines and were exempted from Emergency Notification dated 16th October, 1971. Jitpur Colliery is managed by Area Manager under delegation of power. The Chief Mining Engineer/Asstt. General Manager is the head and control of all Area Managers and his office is situated at Chasnala. The colliery is well mechanised having on its roll more than 2700 workmen. All the clerical job of Jitpur Colliery are done by various clerks in various grades and all the clerical staff have been put in four grades, namely :

- (1) Clerical Grade-III
- (2) Clerical Grade-II
- (3) Clerical Grade-I.
- (4) Special Grade.

There is no other grade for clerical staff but those on clerical staff who are semi-technical and highly skilled, and maintaining accounts etc. have been put in Technical Grade-A. The claim of the concerned workmen is for proper fitment of their pay inasmuch as they have been discriminated by



the management. The management paid higher salary to junior workmen in the same grade and all the senior workmen concerned in the present dispute have been paid less than their junior co-workers. The effective promotion, yearly increment, neutralisation and adjustment of salary in respect of promotional grade based on seniority in the same grade are germane to show that the claim of the concerned is justified and that the management deprived them of their rightful claim on account of the prejudice and ill-motive for their trade union activities. The basic salary of S/Shri S. Goswami, C. M. Chacko and S. N. Chakravarty was fixed at Rs. 710 each per month on fitment whereas the salary of G. S. Choudhury, their junior workman in the same grade was fixed on fitment at Rs. 745 per month and this discrimination was done with effect from 1st April, 1979. The basic salary of S/Shri S. Goswami, C. M. Chacko and S. N. Chakravarty is Rs. 1178 each per month as on 1st March, 1984 whereas the basic salary of G. S. Choudhury is Rs. 1229 per month as on 1st March, 1984. Likewise the basic of M. Dey was fixed on fitment at Rs. 688 per month whereas that of H. K. Jha, junior to him in the same grade was fixed on fitment at Rs. 717 per month with effect from 1st April, 1979. The present basic salary of M. Dey is Rs. 1107 per month whereas that of H. K. Jha is Rs. 1229 per month. The salary of P. K. Acharya and H. S. Ganguli was fixed on fitment at Rs. 688 each per month whereas that of A. K. Dey junior in the same grade was fixed on fitment at Rs. 717 per month with effect from 1st April, 1979. The present basic salary of P. K. Acharya is Rs. 1178 per month on his promotion on 1st May, 1984 but his basic salary was Rs. 1107 on 1st April, 1984 whereas that of A. K. Roy was Rs. 1152 per month on 1st April, 1984. The discrimination in fitment of basic salary of concerned workmen who are senior in service is shown on chart prepared yearwise in comparison with their junior co-workers in the same grade getting higher basic salary. The Chart has been made Annexure and marked Ext. W-1. The concerned workmen are entitled to their proper fitment in their respective grade higher than their junior co-workers with effect from 1st April, 1979. The management discriminated the concerned workmen by adopting double standard which is against the norm of the Coal Industry and against the direction of all Coal Awards. In the circumstances the union has submitted that its claim is justified.

3. The case of the management of Noonidih-Jitpur Colliery of M/s. Indian Iron & Steel Co. Ltd., as appeared from the written statement submitted, bereft of unnecessary details, is as follows:

The present reference is not maintainable and this Tribunal has got no jurisdiction to adjudicate upon the controversy raised by the union. The appropriate forum for resolving any doubt or difficulties in interpreting or implementing any clause of N.C.W.A. II is the Joint Bipartite Committee itself and not this Tribunal. The pay scale of employees of the Coal Industry and the method of fitment of the employees in such pay scales have been laid down by the J.B.C.C.I. for the Coal Industry at the Industry and National Level as per N.C.W.A.-I, II and III which came into effect from 1st January, 1975, 1st January, 1979 and 1st January, 1983 respectively. The demand of the sponsoring union in the present case is based on misconception and mis-interpretation of the provisions of the implementation instructions issued by the Joint Bipartite Committee for the Coal Industry in respect of N.C.W.A. II. Some anomalies with regard to the implementation of N.C.W.A. II were considered in the meeting in the Standardisation Committee of the J.B.C.C. I held on 26th February, 1980 and 18th June, 1980 and decision was taken by the said Committee for removing the anomalies under some conditions which are as follows:

“(a) Employees should be in the same pay scale and should also be having the same designation and covered by the same seniority list in a cadre;

(b) The seniors in the said seniority list should have been promoted prior to 1st January, 1979 and the juniors in the same seniority list and cadre should have been promoted after 1st January, 1979 after implementation of N.C.W.A. II; and

(c) The seniors promoted prior to 1st January, 1979 should have been getting the same pay or higher pay in the N.C.W.A. I pay scale immediately prior to promotion than the juniors who were promoted after 1st January, 1979 and who should have secured higher pay than their seniors promoted prior to 1st January, 1979 on the date when the juniors were promoted.”

Anomalies in fixation of pay should be removed as per the decision of the Standardisation Committee of J.B.C.C.I only if the above conditions are fulfilled and not otherwise. It has been submitted by the management that S. Goswami and C. M. Chacko, are Stenographers and Confidential Assistants and they belong to the same cadre and seniority list for the purpose of promotion. There is an anomaly in the pay scale of these persons. S. N. Chakravarty is a Store Keeper and he belongs to an entirely different cadre and seniority list. There is no anomaly of pay of these employees. G. S. Choudhury is a Cashier and he belongs to an entirely different cadre and seniority list and there exists no anomaly in his pay. M. Dey is a Senior Time Keeper and his cadre, seniority list and promotion channel are entirely different. There is no anomaly in his pay. H. K. Jha is an Accounts Clerk working in Accounts Department and the cadre for such Accounts Clerk and seniority list and promotional channel are entirely different. There is no anomaly in his pay. P. K. Acharya and H. S. Ganguli are Asstt. P.F. and Bonus Clerk in P.F. and Bonus Section. They are in the same channel of promotion and in the same seniority list as A. K. Roy. There is no anomaly in their pay with reference to others referred to in the order of reference. Stenographers and Confidential Assistants, Store Keepers, Cashiers, Senior Time Keepers, Accounts Clerk belong to different cadres and seniority list and their promotion channels are entirely different. In the matter of pay fixation they had not come within the scope of the decision of the Standardisation Committee of J.B.C.C. I and so there is no question of rectification of the alleged anomaly in their cases. Similarly Asstt. P. F. and Bonus Clerk and P.F. and Bonus Clerks had nothing to do with Stenographer-cum-Confidential Assistants or Store Keepers or Cashier or Senior Time Keepers or Accounts Clerks since they are not covered same cadres or promotion channel and seniority lists. Hence, there is no question of comparing the pay of P. K. Acharya, H. S. Ganguli with that of A. K. Roy and others. The case of the union is that since all the employees are in clerical grades the anomalies in their pay should be rectified. But more pay scale or grade are not at all relevant for consideration of the issue of removable or anomalies. The pay scale, designation, cadre and channel of promotion and seniority list are relevant for the purpose. Since these criteria are not fulfilled in the present case the demand of the sponsoring union is mis-conceived and baseless and untenable and is liable to be rejected. In the circumstances the management has prayed that the instant dispute may be disposed of in its favour.

4. In its rejoinder to the written statement of the management the union has asserted that this Tribunal has got jurisdiction to decide the issue in controversy in the present reference. It has been alleged that the management has tried to mis-lead this Tribunal by twisting facts. It has further been alleged that the management has tried to mis-lead the Tribunal by stating that in the matter of fitment or fixation of pay, designation and same seniority list in a cadre are relevant. But different nomenclatures have been introduced in one grade within the limitation of 4 grades and there can be no scheme for designation-wise seniority list but all seniority list should be made grade-wise under different nomenclature within 4 grades as awarded by different Awards, namely, All India Industrial Tribunal (Colliery Disputes) known as Mazumdar Award 1956, Labour Appellate Tribunal, Arbitration Award known as Dasgupta Award and award of Central Wages Board for the Coal Mining Industry followed by Wage Agreement. It has been alleged that the concerned workmen have been discriminated by the management in the matter of fixation of pay in comparison with their junior workmen in the same scale of pay. This anomaly in the fixation of pay should be removed.

5. In rejoinder to the written statement of the workmen, the management has stated that Noonidih-Jitpur colliery is one of the captive Coal Mines of M/s. Indian Iron and Steel



Co. Ltd. and Chasnalla and Ramnagore collieries are other two such captive coal mines of the colliery. Each colliery is a separate industrial establishment with separate certified Standing Orders. However, sometimes for administrative reasons, and in process of adjustment of surplus workers and removing difficulty in man-power transfers of employees are ordered from one colliery to another. M/s. Indian Iron & Steel Co. Ltd. was nationalised by the Central Government in public interest and it has been made a part of Steel Authority of India. It has been stated that various clerical grades are indicative of the pay scale and the employees who are placed in such pay scale are designated having regard to their work and are divided into separate cadres, such as, Secretariat Cadre, Stores Cadres, Accounts Cadre, General Clerical Cadre etc. The reference to these cadres will be found in the implementation instruction issued by J.B.C.C. I under the N.C.W.A. on the basis of the decision of the Promotion Policy Committee. The management has denied to have discriminated in any way in the matter of fitment of pay of any of the workmen concerned. C. M. Chacko is a Stenographer and Confidential Assistant while S. N. Chakraborty is a Store Keeper. S. Goswami falls in the same category as C. M. Chacko. G. S. Choudhary is a Cashier and the three workers belong to two different cadres with different channels of promotion and there can be no question of making any comparison between them for the purpose of seniority and juniority. There is absolutely no reason for comparing the basic salary of S. N. Chakraborty who is a Store Keeper with that of S/Shri S. Goswami and C. M. Chacko who are Stenographers and Confidential Assistants and who belong to a different cadre having different channel of promotion and seniority list. Likewise, M. Dey is a senior Time Keeper and belongs to a different cadre whereas H. K. Jha is an Accounts Clerk and his cadre is different. Hence, two cannot be compared with each other for any purpose whatsoever. S/Sri P. K. Acharya and H. S. Ganguly are Asstt. P.F. Bonus Clerks in P.F. and Bonus Sections and they are in the same channel of promotion and in the same seniority list as A. K. Roy. There is absolutely no anomaly in their pay with reference to others.

6. The sponsoring union has examined one of the concerned workmen, namely, WW-1 C. M. Chacko as its sole witness and laid in evidence a mass of documents which have been marked Ext. W-1 to W-6. On the other hand, the management has examined MW-1 Mohit Mukherjee, Head of Department of Personnel of Chasnalla, Jitpur and Ramnagar collieries of the company of M/s. Indian Iron & Steel Co. Ltd., besides Ropeway and Washery as its sole witness and laid in evidence a number of documents which have been marked Exts. M-1 to M-3.

7. It is an undeniable fact that M/s. Indian Iron & Steel Co. Ltd., a body corporate, has coal mining and production of steel as its area of operation. The company is the owner of three collieries, namely, Noonodih-Jitpur, Chasnalla and Ramnagar, besides Ropeway and Washery and Burnpur Steel Factory. It appears that all the collieries are captive coal mines of the company.

8. The crux of the dispute is the claim of the concerned workmen for fixation of their pay at higher stages while the case of the management is a denial of the same. It appears that the present dispute has arisen as a sequel to interpretation or implementation of NCWA-II.

9. Sri R. Mohan, authorised representative of the management, has contended that this reference is not maintainable since it relates to interpretation or implementation of N.C.W.A. II and that in such circumstances the J.B.C.C.I. for the Coal Industry is the appropriate authority to decide and dispose of this dispute. Sri P. B. Choudhary, authorised representative of the union, has contended that this Tribunal has got jurisdiction to entertain and decide this dispute.

I have carefully considered the submission of both the parties arrayed in the dispute. It appears that there is nothing in evidence to indicate that Joint Bipartite Committee for Coal Industry is the sole arbitrator and adjudicator authority for the dispute of like nature. On the other hand it is observed that the present dispute has been raised within the frame work N.C.W.A. II and interpretation or implementation there-

of. According to me, the union is quite within its right to raise the dispute within the frame work as aforesaid. Hence, I find no substance in the contention of Sri R. Mohan that the present dispute is not maintainable.

10. The case of the sponsoring union for the concerned workmen in the present dispute is for fitment of the pay of the concerned workmen as they have been discriminated by the management. In order to substantiate its claim the union has produced a document entitled "Statement of comparative Chart shows determination by fitment of pay as per N.C.W.A. II in respect of staff of Noonodih-Jitpur Colliery of M/s. Indian Iron & Steel Co. Ltd. (Ext. W-1)". This document is almost comparable to management's Ext. M-3 with the difference that in management's document the designations of the concerned workmen and the designations of the comparable workmen are available and the date of calculation, while it ended as on 1st March, 1981 in the document produced by the union, it has been forwarded to 1st September, 1982 in the management's document. Anyway, it appears from the document produced by the management (Ext. M-3) that Sri S. N. Chakraborty is designated as General Asstt. (Stores), S/Sri C. M. Chacko and S. Goswami both of them, as Stenographer-cum-Confidential Assistant and the comparable workmen Sri G. S. Chaudhary as Cashier. The document produced by the management further reveals that Sri M. Dev is designated as Sr. Time Keeper while the comparable workman Sri H. K. Jha as Additional Cashier; it also discloses that S/Sri P. K. Acharya is designated as P.F. and Bonus Incharge, H. S. Ganguly as Asstt. P.F. and Bonus Incharge and A. K. Roy as P.F. and Bonus Clerk. Nothing transpires in evidence to militate against this description of designations of the concerned workmen and the comparable workmen as reeled off by the management. This being so, the description of designations of the concerned workmen and the comparable workmen must perforce be accepted.

11. It appears from the evidence of WW-1 C. M. Chacko that on Noonodih-Jitpur Colliery there exists four grades in clerical cadre i.e. Clerical Grade-(Special), Clerical Grade-I, Clerical Grade-II and Clerical Grade-III. But this position does not appear to be entirely correct. Ext. W-4 is the reproduction of report of Central Wage Board for Coal Mining Industry; it envisages gradation of clerical staff into four grades, namely, Grade-III, Grade-II, Grade-I and Special Grade. MW-1 Mohit Mukherjee who is the Head of the Department of Personnel in respect of the three coal mines, Ropeway and Washery of M/s. Indian Iron & Steel Co. Ltd. has stated that earlier the clerical staff was graded into four grades, but now the clerical staff are graded into five and Technical and Supervisory Grade-A has been made available to clerical staff. He has further stated that S. N. Chakraborty who is one of the concerned workmen in this case has been given this grade i.e. Technical and Supervisory Grade-A. The promotion order of Sri Chakraborty dated 9th January, 1986 which has been made available by the management reflects this position. Thus, it is seen that the clerical staff of Noonodih-Jitpur Colliery are classified into five grades, namely, Grade-III, Grade-II, Grade-I and Special Grade and Technical and Supervisory Grade-A.

12. It appears that the union has based its claim for fitment on the ground of same gradation or pay scale. WW-1 C. M. Chacko has stated in cross-examination that comparison (evidently with respect to fitment of pay) has been made not on the basis of designation but with reference to the grade obtained. The case of the management is that the claim of the union is based on mis-conception of facts for the employees fitment of pay does not only depend upon the same scale of pay but also upon the same designation, cadre and same seniority list and in the process an employee, senior in service, having a certain scale of pay, certain designation, cadre and seniority list may get lesser fitment than an employee having the same scale of pay but having different designation, cadre and seniority list under certain circumstances. Now it remains to be seen whether the practice as obtaining in Noonodih-Jitpur Colliery is in-conformity with N.C.W.A.

13. It appears that the sponsoring union has relied on the written statement and annexure filed by the management before the Conciliation Officer. This written statement with annexure has been marked Ext. W-2. WW-1 C. M. Chacko has stated at the time of hearing that this document is sign-

ed by Mr. S. P. Mehra, the then General Manager and countersigned by Sri R. Mohan, Dy. Manager (Personnel)

and on the basis of his evidence this document has been marked Ext. W-2. I glean hereincbelow the annexure in full :

| Sl. No. | Name             | Designation                        | Deptt.         | Date of entry in Cl. G. Special. | Basic as on 1-3-79 | Basic as on 1-4-79 | Basic as on 1-3-83 | Date of annual increment |
|---------|------------------|------------------------------------|----------------|----------------------------------|--------------------|--------------------|--------------------|--------------------------|
|         |                  |                                    |                |                                  | Rs                 | Rs                 | Rs                 |                          |
| 1.      | S. Goswami       | Stenographer-cum-Confid. Assistant | Administration | 1-12-78                          | 710                | 710                | 850                | 1st March                |
| 2.      | C.M. Chacko      | -do-                               | Personnel      | 1-1-78                           | 710                | 710                | 850                | ,,                       |
| 3.      | S.N. Chakraborty | Sr. Store Keeper                   | Store          | 1-1-78                           | 710                | 710                | 850                | ,,                       |
| 4.      | G.S. Choudhury   | Cashier                            | Cash           | 1-4-79                           | 688                | 745                | 880                | ,,                       |
| 5.      | M. Dey           | Sr. Timekeeper                     | Time Sec.      | 1-10-70                          | 688                | 688                | 804                | ,,                       |
| 6.      | H.K. Jha         | Accounts Clerk                     | Accounts       | 1-4-79                           | 669                | 717                | 839                | ,,                       |
| 7.      | P.K. Acharjee    | Asstt. P.F. & Bonus Clerk.         | P.F. Sec.      | 1-1-78                           | 688                | 688                | 804                | ,,                       |
| 8.      | H.S. Ganguli     | -do-                               | -do-           | 1-1-78                           | 688                | 688                | 804                | ,,                       |
| 9.      | A.K. Roy         | P.F. & Bonus Clerk                 | -do-           | 1-4-79                           | 669                | 717                | 839                |                          |

This annexure shows that S/Shri S. Goswami and C. M. Chacko are designated as Stenographer-cum-Confidential Assistants, Sri Goswami placed under Administration Department while Sri C. M. Chacko under the Personnel Department. Sri S. N. Chakraborty is designated as Store Keeper under Store Deptt. and G. S. Choudhury, the comparable workman, is designated as Cashier and placed under Cash Department. Likewise, Sri M. Dey is designated as Senior Time Keeper under Time Section Deptt. while Sri H. K. Jha, the comparable workman, is designated as Accounts Clerk in the Accounts Department. S/Sri P. K. Acharjee, H. S. Ganguly and comparable workman A. K. Roy have all been working in P.F. Section, but with different designations. Sri Acharya and Sri Ganguly as Asstt. P.F. and Bonus Clerk while A. K. Roy simply as P.F. and Bonus Clerk. This position as appearing in this document Ext. W-2 has not been assailed by the sponsoring union. Thus, it is seen that the concerned workmen and the comparable workmen are not holding the same designations and are not placed under the same Department save and except S/Sri P. K. Acharjee, H. S. Ganguly and A. K. Roy who are placed under the same Department.

14. The sponsoring union has asserted that the issue of fitment on promotion is based on grade-wise seniority list although employees may have different designations within four grades while the management has asserted that fitment on promotion is not based on grade-wise seniority list, but on the seniority list borne on the cadre having different designations. The sponsoring union has not laid any evidence to meet this issue of contention. On the other hand, the management has produced the cadre scheme for the ministerial staff and its promotional channel and cadre scheme for Accounts personnel with promotional channel as framed by the J.B.C.C.I. dated 17th July, 1984 and 22nd July, 1985. The management has also produced the Organisation Chart of Store Department, Time Section, P.F. and Bonus Section, Accounts Department and Administration and promotional channels thereof for the year 1970-79 (Ext. M-2). This Chart and promotional channel are in conformity with the instruction laid down by J.B.C.C.I. The issue of promotion is not a live issue in the present dispute; the fitment in the scale on promotion is the live issue. But in order to consider this issue the different cadre scheme and promotional channel thereof must be kept in view.

15. It appears that it was brought to the notice of the J.B.C.C.I. some anomalies in the matter of fitment of salary on promotion and this was discussed and resolved by the decision of the Committee taken on 26th February, 1980 and 18th June, 1980. The principle laid down by the Com-

mittee as emerging from its decision for removal of anomalies are as follows :

(a) employees should be in the same scale of pay and should be having the same designation and covered by the same seniority list borne in the cadre ;

(b) senior employees in the seniority list should have been promoted prior to 1st January, 1979 and the junior employee in the same seniority list and cadre should have been promoted after 1st January, 1979; senior employees promoted prior to 1st January, 1979 should have been getting the same pay or higher pay as per N.C.W.A. I pay scale immediately prior to promotion than the junior employees who are promoted after 1st January, 1979 and who should have secured a higher pay than their senior promoted prior to 1st January, 1979. Along with this basic principle of fixation or fitment as per report of the Central Wage Board for the Coal Mining Industry appearing at page 150 and para 50 which was adopted by the J.B.C.C.I. should also be considered in the matter of fixation of the concerned workmen. The relevant report of the Central Wage Board for the Coal Mining Industry is as follows :

"In the event of the existing pay of the officiating workmen being higher than the minimum of the scale of pay of the higher category in which he works, than his existing pay should be adjusted into the next higher step in the higher category's scale and he should be given one increment in the scale."

Applying all of these yard-sticks it is evident that fixation or fitment of pay on promotion of the concerned workmen, namely, S/Sri (1) S. Goswami, (2) C. M. Chacko and (3) S. N. Chakraborty was done properly by the management and that no discrimination was resorted to by it even though the pay of Sri G. S. Choudhury, the comparable workman was fixed on a higher stage on promotion. Likewise, the fitment of salary on the grade on promotion of the concerned workman Sri M. Dey was done properly and the management did not resort to any discrimination with respect to him vis-a-vis Sri H. K. Jha, the comparable workman.

16. But in the case of S/Sri P. K. Acharjee and H. S. Ganguly the management has not done their fixation properly in comparison with fixation of pay of Sri A. K. Roy since they are borne on the same cadre and seniority list and designation and also since their fixation was not done in accordance with the guideline as laid down by the J.B.C.C.I. as stated before. The management is directed to remove the anomaly in their fixation of pay as per the guideline of

J.B.C.C.I. and to pay them the difference in emoluments within one month from the date of publication of the award.

17. Accordingly, the following award is rendered the demand of Colliery Staff Association for proper fitment of pay in respect of S/Shri S. Goswami, C. M. Chacko, S. N. Chakravarty and M. Dey is not justified. But the demand of the Staff Association for proper fitment of pay in respect of S/Sri P. K. Acharjee and H. S. Ganguly is justified. The management is directed to make proper fitment of pay in respect of S/Sri P. K. Acharjee and H. S. Ganguly and to pay them difference in emoluments within one month from the date of publication of the award.

In the circumstances of the case I award no cost.

S K. MITRA, Presiding Officer

[No. L-20012/(282)/84-D. III(A)/TR (Coal-I)]

का. भा. 800.—प्रौद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, मैसर्स भारत कोकिंग कोल लिमिटेड का लोहापट्टी कोलियरी के प्रमुखता से सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट प्रौद्योगिक विवाद में केन्द्रीय सरकार प्रौद्योगिक अधिकरण, (सं. 1), धनबाद के पंचाट को प्रकाशित करती है।

S.O. 600.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 1 Dhanbad) as shown in the Annexure in the Industrial Dispute between the employers in relation to the Lohapatti Colliery of M/s. Bharat Coking Coal Limited and their workmen.

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD.

In the matter of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947.

Reference No. 52 of 1984

#### PARTIES :

Employers in relation to the management of Lohapatti Colliery of M/s. B. C. C. Ltd.

AND

Their Workmen.

#### APPEARANCES :

For the Employers : Shri G. Prasad, Advocate.

For the Workmen : Shri D. Mukherjee, Secretary. Bihar Colliery Kamgar Union. (Many a occasion).

STATE : Bihar.

INDUSTRY : Coal.

Dated, the 18th January, 1989

#### AWARD

By Order No. 20012(157)/84-D. III(A), dated, the 30th July, 1984, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) of Sec. 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the action of the management of Lohapatti Colliery of M/s. Bharat Coking Coal Limited in not regularising Shri Ram Prasad Rai as a General

Mazdoor is justified ? If not, to what relief the workman is entitled ?"

2. The case of the management of Lohapatti Colliery of M/s. Bharat Coking Coal Ltd. as appearing from the written statement, details apart, is as follows :

The present reference is not legally maintainable either in law or on facts. Ram Prasad Rai, concerned workman, is a Miner/Loader employed at Lohapatti Colliery. He has been deployed to work as General Mazdoor due to exigencies of work. He is being paid fall back group VA wages which is payable to a miner/loader. Wages of Category-I Mazdoor is much lower and, therefore, it is not possible to regularise him as a Category-I General Mazdoor and pay him Group-VA wages. It has been submitted by the management that if such regularisation is done, it will cause industrial unrest and heart burning. It is the exclusive right of the employer to deploy workman from one job to another due to exigencies of work provided the workman concerned is paid the same wages of the job from which he is transferred. The miners in Lohapatti Colliery are very often required to be deployed to work as time rated job due to abrupt vacancies caused by absenteeism which is a special feature of the Coal Mining Industry and if they are to be regularised as time-rated workmen, production of coal would hamper and so they cannot be regularised as time-rated workmen. In the circumstances, the demand of the workmen for regularisation as Category-I General Mazdoor and pay of fall back wages of Group-VA is not justified. Hence, it is prayed that the instant reference be answered in favour of the management.

3. The sponsoring union has not filed any written statement of claim even though ample opportunity was given to it. However, it appears from the terms of reference that the claim of the sponsoring union is that for regularisation of the concerned workman as a General Mazdoor and that this claim was not accepted by the management.

4. The management has not laid any evidence, oral and documentary, in support of its action. The sponsoring union as well as the concerned workman has not laid any evidence oral or documentary.

5. Sri G. Prasad, Advocate, appearing for the management, has submitted that the concerned workman is a Miner/Loader employed at Lohapatti Colliery and is being paid Group-VA wages. He has further submitted that the concerned workman has been deployed to work as General Mazdoor and is being paid fall back wages i.e. Group-VA wages. He has contended that he cannot be regularised as General Mazdoor in Category-I for the simple reason that the wages of Category-I Mazdoor is much less than the workmen under Group-VA and it is not possible to pay him higher wages while regularising him as a General Mazdoor.

6. The management has stated in its written statement, made on verification, that the concerned workman is a Miner/Loader at Lohapatti Colliery and that although he has been deployed to work as General Mazdoor in Cat. I he is being paid fall back wages of Group-VA.

There is no material on record to assail this position. It appears that the wages of piece-rated worker in Group-VA is much higher than the wages of daily-rated worker (time-rated worker) in Category-I. Thus, the position boils down to this that the concerned workman has been claiming regularisation as General Mazdoor in Category-I while claiming full back wages of piece-rated worker in Group-VA. In other words, his claim is for regularisation as time-rated worker and at the same time pay for piece-rated worker. This claim is not only unreasonable but smacks of extreme opportunism. In the circumstances, the claim of the concerned workman is not at all justified and the action of the management in not regularising him as a General Mazdoor is perfectly justified.

7. Accordingly, it is ordered—that the action of the management of Lohapati Colliery of M/s. B.C.C. Ltd. in not regularising Ram Prasad Rai as a General Mazdoor is justified.

In the circumstances of the I award no cost

S. K. MITRA, Presiding Officer  
[No. L-2002(157)84-D. III(A)/(IR(Coal-I))]

नई दिल्ली, 10 मार्च, 1989

का.प्र. 601:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, मिस्र भारत कॉलिंग कोल लि. की कथारा कोलियरी के प्रबन्धन से सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, (सं. 2) घनबाद, के पक्षों को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-2-1989 को प्राप्त हुआ था।

New Delhi, the 10th March, 1989

S.O. 601.—In pursuance of section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 2 Dhanbad as shown in the Annexure in the Industrial dispute between the employers in relation to the M/s. Central Coal Fields Ltd. (Kathara Colly) and their workmen, which was received by the Central Government on the 28-2-1989.

#### ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

Reference No. 299 of 1986

In the matter of an industrial dispute under Section 10(1)(d) of the I.D. Act, 1947.

#### PARTIES :

Employers in relation to the management of Kathara colliery of Central Coalfields Limited and the workmen.

#### APPEARANCES :

On behalf of the workman.—Shri D. Mukherjee, Secretary, Bihar Colliery Kamgar Union.

On behalf of the employers.—Shri R. S. Muthy, Advocate.

STATE : Bihar.

INDUSTRY : Coal

Dated, Dhanbad, the 20th February, 1989

#### AWARD

The Govt. of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-24012(1)/86-D-IV(B), dated, the 12th August, 1986.

#### SCHEDULE

"Whether the action of the management of Kathara Colliery of CCL, P.O. Kathara Dist. Giridih, in retiring Shri N. C. Ghosh, Dumper Operator on 1-5-1985, instead of 1-5-1987 when his actual date of birth is 11-8-1927 as per his service records is legal and justified? If not, to what relief is the concerned workman entitled?"

The case of the management is that the concerned workman Shri N. C. Ghosh was employed as Dumperman with effect from 11-8-89 at Kathara Colliery of M/s. NCDC which has been changed to Central Coalfields Ltd. His designation was subsequently changed to Dumper Operator with the implementation of Excavation Award given by the Industrial Tribunal, Dhanbad. The concerned workman throughout remained at Kathara colliery during the period of his employment until superannuation. The management maintains service sheet/book for its employees in which various particulars relating to the employment of employee including their date of birth/age are entered. In the service sheet of the concerned workman the date of his birth was initially entered as 11-8-1927 but the said age was recorded without any basis or proof. There were other employees of the management in whose case there was no proof of age/date of birth and as such in 1969 all such employees including the concerned workman were got examined by the Medical Officer of Kathara colliery on 1-5-69. The Medical report prepared by the Medical Officer at that time was duly attested by the concerned workman by affixing his LTI. The concerned workman had stated his age as 43 years at the time of his medical examination but the Medical Officer determined his age as 44 years. Thereafter the age of the concerned workman in the service sheet was corrected by scoring out previous entry of 11-8-27 as 1-5-25 or 44 years as per medical certificate dated 1-5-69. The said correction of his date of birth in the service sheet was shown to the concerned workman which was duly attested by the concerned workman by affixing his signature.

The JBCCI vide its Implementation Instruction No. 37 dated 5-2-81 laid down the procedure for determination of the age of the existing employees in the event of their being glaring anomaly in the records of the management through the age assessment committee of the Medical Board. Keeping the said implementation instruction in view all employees of the colliery were given opportunity to bring to the notice of the management in such anomaly so that their cases could be considered by the age assessment committee. The concerned workman did not submit any representation for determination of his age through the age assessment committee at that time. The age of superannuation of the employees of the management is 60 years. Taking the date of birth of the concerned workman as 1-5-25 as recorded in the service sheet he was due for superannuation with effect from 1-5-85. The management in the normal course issued advance notice dated 31-10-84 advising the concerned workman that he would be superannuated with effect from 1-5-85. Thereafter the concerned workman made representation for re-determination of his age and his case was assessed by the age assessment committee which determined his age/date of birth to be the same as entered in the service sheet i.e. 1-5-25. The said report was duly signed by the concerned workman in the light of the report of the age assessment committee. The management was not required to take any further action and the concerned workman was superannuated with effect from 1-5-85. In the voluntary retirement application of the concerned workman and in the application for LTC the concerned workman had declared his date of birth as 1-5-25. Thus the date of birth of the concerned workman was correctly recorded in the service sheet as 1-5-25 as subsequently admitted by the concerned workman. Subsequently as a result of after thought he started claiming that his date of birth was 1-5-25. There is no basis for considering the late of birth of the concerned workman as 11-8-27. On the above facts it is submitted on behalf of the management that the action of the management in superannuating the concerned workman with effect from 1-5-85 is justified and that 11-8-27 was not the date of birth of the concerned workman.

The case of the workman is that the age of the concerned workman was recorded in Form B Register by the erstwhile employer as 11-8-27. His age was also recorded in the P.F. records and in the service sheet as 11-8-27. The management all of a sudden illegally and arbitrarily changed the date of birth of the concerned workman and retired him prematurely with effect from 1-5-85. The concerned workman represented before the management against the illegal and arbitrary change regarding the date of birth without affording him any opportunity but with no effect. The concerned workman also represented before the management against his

illegal and arbitrary superannuation and he also prayed before the management for review of his age through the Medical Board as in the case of some other workmen. The management was biased and prejudicial against the concerned workman for his trade union activities. When the management did not pay heed to the request of the concerned workman the union raised an industrial dispute before the ALc(C) Hazaribagh who took up the conciliation. The conciliation ended in failure and thereafter the present reference was made to this Tribunal for adjudication. According to the workman the action of the management in retiring the concerned workman with effect from 1-5-85 was illegal arbitrary, unjustified and against the statutory records of the management. The action of the management was also not justified in changing the date of birth which was recorded in Form B Register and other statutory registers as 11-8-27 and thereby retiring him with effect from 1-5-85. On the above facts it has been prayed that the concerned workman be reinstated with full back wages after holding his date of birth as 11-8-27.

The points for decision are (1) whether the actual date of birth of the concerned workman is 11-8-27 as per his service records (2) whether the retirement of the concerned workman with effect from 1-5-85 is justified?

The management and the workmen have each examined one witness in support of their respective case.

The documents of the management are marked Ext. M-1 to M-9, no document has been exhibited on behalf of the workman.

#### Point No. 1

It is the admitted case of the parties that the date of birth of the concerned workman was recorded as 11-8-27 in his service sheet. Ext. M-1 is the service sheet which shows that original date of birth of the concerned workman was recorded as 11-8-27 and that the same was penned through and an entry was made in red ink as 1-5-25 or 44 years as per medical certificate No. MO/KT/17/575 dated 1-5-69. The management did not produce Form B Register or P.F. records in respect of the concerned workman to show that the date of birth of the concerned workman was not recorded as 11-8-27 as is being asserted by the concerned workman. It appears therefore that there is absolutely no dispute regarding the fact that the age of the concerned workman was originally recorded as 11-8-27 in the service sheet and other statutory records of the management.

It appears from Ext. M-1 as stated above, that the date of birth of the concerned workman as subsequently corrected in the service sheet on the basis of the medical certificate dated 1-5-69. The said certificate dated 1-5-69 is Ext. M-2 in the case. His medical examination form is of the period of NCDC in respect of Kathara colliery. In col. No. 5, 43 years of age is recorded as stated by the concerned workman and the age by appearance according to the doctor was 44 years. On perusal of the Medical certificate Ext. M-2 it will appear that this was not a certificate in respect of assessment of age of the concerned workman but it was a certificate by which the Medical Officer incharge of Kathara colliery hospital considered that the concerned workman is of sound mental health and is fit to work under NCDC Ltd. upto the suitable age. Thus this was a certificate granted by the doctor regarding the fitness of the concerned workman to work in the colliery. There is nothing in this certificate to show that the age of the concerned workman was scientifically assessed by the doctor. On the contrary it shows that the doctor had stated the age of the concerned workman as 44 years by appearance which is not a determination by any scientific test. The said age was apparently based only on visual perception and as such it could not be said to be a certificate by which the doctor of the colliery had assessed his age as 44 years. The correction of the age of the concerned workman in his service sheet Ext. M-1 on the basis of the appearance found by the doctor is not at all a scientific determination of age and there was apparently no reason on its basis to correct the date of birth of the concerned workman in his service sheet Ext. M-1 or any of the Statutory register.

MW-1 is Senior P.O. in Kathara colliery. He has stated that the original date of birth in the service sheet of the concerned workman Ext. M-1 was not based on medical examination and that subsequently the concerned workman was subjected to medical examination on 1-5-65. He has stated that on the basis of the medical examination report Ext. M-2 the date of birth of the concerned workman in Ext. M-1 was corrected as 44 years and his date of birth was noted as 1-5-25 and that Shri N. C. Ghosh signed on the said correction in Ext. M-2. From his cross-examination it appears that in the service sheet the date of birth of the concerned workman was noted as 11-8-27 and the signature of the concerned workman was taken on it. Although MW-1 has stated that the signature of the concerned workman had been taken in service sheet after the correction of his age it appears that after perusing Ext. M-1 this witness stated that the said sheet contains only one signature of the concerned workman and he cannot say if the signature of the concerned workman was taken after the correction of his age was done in Ext. M-1. I have also looked the original service sheet Ext. M-1 and have found that there is only one signature of the concerned workman against the original entry of his date of birth and there is no subsequent signature of the concerned workman after his original recorded age was penned through and correction as made in the red ink. Thus it is clear that the management did not obtain signature of the concerned workman after the original date of his birth was penned through and his age was corrected as 1-5-25.

The management has tried to show that Ext. M-2 contains the LTI of the concerned workman. The management has examined only one witness namely MW-1. MW-1 has stated in his cross-examination that Ext. M-2 contains the LTI of the concerned workman and it does not bear his signature. He further stated that the LTI was not given in his presence. As MW-1 was not present when the LTI was taken on Ext. M-2 it is not possible for MW-1 to show that Ext. M-2 contains the LTI of the concerned workman. There is no witness to show that the concerned workman had given the LTI on Ext. M-2. The concerned workman on the other hand stated as WW-1 that he had not given the LTI and that he is literate and that he was always writing his signature. It was suggested to MW-1 that Ext. M-2 is a manufactured document. The doctor who is stated to have issued Ext. M-2 has not been examined in this case to show that this certificate was actually issued by him. It will thus appear that Ext. M-2 has not been proved by the doctor who had issued the same and under the circumstances stated above it is difficult to hold that the concerned workman had knowledge regarding the assessment of his age by the doctor as stated in Ext. M-2 and that the original age of the concerned workman was corrected in the service sheet Ext. M-1 in accordance with the age as stated by appearance by the doctor in Ext. M-2.

The management has not adduced any evidence to show that any notice was given to the concerned workman regarding the correction of his age in his service sheet. No doubt the correction of the date of birth of the concerned workman in the service sheet is an administrative order but as it involves civil consequences namely his early retirement on the basis of the corrected age, the age must be made consistent with the rules of natural justice after informing the concerned workman and the evidence in support of the age being corrected. In the above view of the matter I hold that the correction of the date of birth of the concerned workman as 1-5-25 on the basis of the medical certificate Ext. M-2 was not at all in accordance with the principles of natural justice and as such it should not be given due weight.

There is no assessment and fixation of age of the concerned workman in Ext. M-6. It appears that the concerned workman was examined by the Medical Officer in terms of CMO Ranchi's letter dated 6-2-82 of those employees who applied for employment of the dependants on the ground of disablement due to sickness under clause 10.3.4 of NCWA-II. The management has produced Ext. M-7 which is said to be the report of the age determination committee at Area level, Kathara Area. It will appear from this certificate that the

concerned workman was examined on 16-2-85 and the age assessment committee assessed and confirmed the age of the concerned workman as 1-5-25 as recorded in the service sheet. On perusal of the report of the age determination committee Ext. M-7 it will appear that no scientific test was made in order to arrive at the conclusion regarding the assessment of the age of the concerned workman. MW-1 has stated that there were three members of the age assessment committee consisting of Shri S. M. Rab, Personnel Manager, G. S. Malik Staff Officer (Mining and Doctor Chidar, Dy. Medical Superintendent. None of these three members of the age assessment committee have come forward to depose before the Tribunal to say as to how they had arrived at the age assessed by them. The age assessment committee only confirmed the corrected date of birth recorded in the service sheet. On perusal of the said report Ext. M-7 it appears that the assessment of age was not made in accordance with any scientific test. Moreover neither the doctor who had examined the concerned workman nor the two other members of the age determination committee deposed before me so that the correctness of the report Ext. M-7 can be tested. I hold therefore that the determination of the age of the concerned workman in Ext. M-7 cannot be given the weightage of assessment of age by scientific test. Out of the three members two were non-medical persons and they were not competent to assess the age of person. Even the doctor who had examined the concerned workman did not state in his report the basis on which he had arrived at the conclusion regarding the assessment of age of the concerned workman. Such assessment cannot do away with the original date of entry of the concerned workman in various records of the management.

It is stated by the management that the concerned workman had stated his date of birth as 1-5-25 in his application for retirement and employment of dependent. This application was filed on 26-11-84 and it appears to be on the basis of the corrected age of the concerned workman. It is stated that the columns regarding the date of birth and other particulars in Ext. M-5 were not entered in the pen of the concerned workman and that it was entered by the office. In any case the date of birth in Ext. M-5 stated as 1-5-25 could not bind the concerned workman to establish that the date of his birth was 1-5-25.

In view of the evidence discussed above I hold that the date of birth of the concerned workman is 11-8-27 as per his service record and that the correction of the said age as 1-5-25 in the service sheet was not in accordance with the principles of natural justice and scientific test so as to accept it.

#### Point No. 2

In view of the discussions and finding made above I hold that retirement of the concerned workman with effect from 1-5-85 is not justified.

In the result, I hold that the action of the management of Kathara colliery of Central Coalfields Ltd. in retiring the concerned workman Shri N. C. Ghosh, Dumper Operator with effect from 1-5-85 instead of 1-5-87 when his actual date of birth is 11-8-27 as per his service record is not legal and justified. The concerned workman will therefore be deemed to continue in service with effect from 1-5-85 till 1-5-87 and the management is directed to pay all wages and other consequential benefits for the said period within 2 months from the date of publication of the Award. The concerned workman has not been ordered to join on his retirement as the period of his superannuation with effect from 1-5-87 already passed.

This is my Award.

Sd/-

I. N. SINHA, Presiding Officer

[No. L-24012/11/86-D.IV(B) IR (Coal)]

का.प्र. 662 — औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्वय में, केन्द्रिय सरकार, भारत सरकार कोकिंग कोल लि., की महेशपुर कोलियरी के प्रधानमंत्री से सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अतुल्य में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, (सं. 2), धनबाद के संघाट को प्रकाशित करती है, जो केन्द्रीय सरकार की 1-3-89 को प्राप्त हुआ था।

S.O. 602.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 2) Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the Messrs. Bharat Coking Coal Limited Maheshpur Colliery and their workmen, which was received by the Central Government on the 1-3-89.

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

Reference No. 31 of 1987

In the matter of an industrial dispute under Section 10(1)(d) of the I.D. Act, 1947.

#### PARTIES :

Employers in relation to the management of Maheshpur colliery of Messrs. Bharat Coking Coal Limited and their workmen.

#### APPEARANCES :

On behalf of the workmen:—Shri G. D. Pandey, Vice-President, R.C.M.S. Union.

On behalf of the employers:—Shri B. Joshi, Advocate.

STATE : Bihar.

INDUSTRY : Coal

Dated, Dhanbad, the 21st February, 1989

#### AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/256/86-D.III(A), dated, the 15th January 1987.

#### SCHEDULE

“Whether the action of the management of Maheshpur colliery of M/s. Bharat Coking Coal Limited in dismissing from service their workman Shri Karu Nonia, Tyndal, from 1-3-1984 was justified ? If not, to what relief is the said workman entitled?”

In this case instead of filing the W.S. both the parties appeared and filed a Petition of compromise. I heard them on the said petition of compromise and I do find that the terms contained therein are fair, proper and beneficial to both the parties. Accordingly I accept the same and pass an Award in terms of the Petition of compromise which forms part of the Award as Annexure.

Sd/-

I. N. SINHA, Presiding Officer

[No. L-20012/256/86-D.III(A)/IR(Coal-D)]

## ANNEXURE 'A'

## BEFORE THE PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. II AT DHANBAD

Reference No. 31/87

Employers in relation to the management of Maheshpur Colliery of M/s. Bharat Coking Coal Limited.

## AND

## THEIR WORKMEN

## Petition of Compromise

The Humble petition on behalf of the parties to the above reference most respectfully sheweth :—

1. That the Central Government by notification Reference No. L-20012(256)/86-D.III(A) dated Nil has been pleased to refer the present dispute on the following issue:—

## SCHEDULE

"Whether the action of the management of Maheshpur Colliery of M/s. Bharat Coking Coal Limited in dismissing from service their workmen, Shri Karu Nonia, Tyndel, from 1-3-1984 was justified? If not, to what relief is the said workman entitled?"

2. That the parties have amicably settled the dispute on the following terms.

## TERMS OF SETTLEMENT

- (A) That the concerned workman Shri Karu Nonia will be re-instated without back wages within one week from the date of his reporting for duty.
- (B) That the period of the idleness from the date of dismissal i.e. 1-3-1984 to till the date of resumption of duty will be treated as leave without wages and his continuity of service will be maintained.
- (C) That, the concerned workman will not be entitled to wages, bonus or any other benefit save except the gratuity payable to him on the strength of continuity of service for the entire period of his idleness from the date of dismissal till the date of resumption of his duty.
- (D) That the concerned workman should report for his duty within 15 days from the date of this settlement. In case he will not report for his duty within a period of 30 days from the date of this settlement the concerned workman will not have any claim for his re-instatement and it will be presumed that he had accepted the dismissal from the service.
- (E) That in view of the above settlement there exists no dispute for adjudication.

Under the facts and circumstances stated above the Hon'ble Tribunal will be graciously pleased to accept the settlement as fair and proper and be pleased to pass the Award in terms of settlement.

FOR THE EMPLOYERS

FOR THE WORKMEN/UNION

(K. KUMAR)

GENERAL MANAGER  
GOVINDPUR AREA

(G. D. PANDEY)

VICE PRESIDENT

RASHTRIYA COLLIERY MAZDOOR SANGH

(S. P. SINGH)

PERSONNEL MANAGER

Witnesses :—

1. Sd/-
2. Sd/-
3. Sd/-

का.भा. 603:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, ई.ई.सी. कोल लि. के सिजुआ क्षेत्र-5 के प्रबंधक से 28.2.1986 और उनके कर्मकारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नं.-2, धनबाद के पक्षों के समक्ष करती है, जो केन्द्रीय सरकार का 28-2-1986 के प्र.सं. 603 का है.

S.O. 603.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 2) Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the M/s. Bharat Coking Coal Limited (Sijua Area No. 5) and their workmen, which was received by the Central Government on the 28-2-89.

## ANNEXURE

## BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

Reference No. 109 of 1986.

In the matter of an industrial dispute under Sections 10(1)(d) of the I. D. Act, 1947.

## PARTIES :

Employers in relation to the management of Sijua Area V of M/s. Bharat Coking Coal Limited and their workmen.

## APPEARANCES :

On behalf of the workmen : Shri B. B. Pandey, Advocate.

On behalf of the employers : Shri B. Joshi, Advocate.

STATE : Bihar.

INDUSTRY : Coal.

Dated, Dhanbad, the 20th February, 1989.

## AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Sections 10(1)(d) of the I. D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012(255)/85-D. III(A), dated, the 29th February, 1986.

## SCHEDULE

"Whether the demand of Coal Mines Engineering Worker's Association that the management of Sijua Area-V of M/s. Bharat Coking Coal Limited should place their workman Shri S. N. Kumar, Pay Loader Operator of Joga Fire Project in Excavation Grade 'D' is justified? If so, to what relief is the workman concerned entitled?"

The case of the workmen is that the concerned workman Shri S. N. Kumar was appointed as HEMM(T) in January, 1982 in Cat. V and was posted at Joga Fire Project of M/s. B.C.L. From the very beginning of his appointment i.e. from January, 1982 the concerned workman started working as Pay Loader Operator and is continuing in such job. As the Pay loader operator is entitled for Grade-D (exc.) the concerned workman was paid the difference of wages of Grade-B and Cat. V. He was paid such difference of wages from January, 1983 to December, 1983 for full period of about one year. His payment of difference of wages was stopped from January, 1984. The management did not pay any difference of wages for the earlier period i.e. from January, 1982 to December, 1982 as the concerned workman was treated under training for the said period. When the concerned workman was continuing in the job of pay Loader Operator even after December, 1983 and was not paid the difference



of wages of Cat. V and Grade-B, he approached the management in respect of the stoppage of the payment of his difference of wages he also represented before the management for his regularisation as Pay Loader Operator Grade-B on the strength of the job performed by him for considerable period and fulfilling the essential qualification. The management did not consider the demand of the concerned workman and he was assured by the local management that a note sheet has been sent to the Area office with recommendation for his regularisation in Grade-B. But no such approval was made. The Management instead of regularising the concerned workman in Grade-B placed him to Grade-E with effect from 7-8-1983 and Grade-D with effect from 7-1-1984. In similar cases in the same Area and other Areas of M/s. B.C.C.L. such pay Loader Operators have been regularised in Grade-B but the case of the concerned workman was being ignored.

The concerned workman is a Branch President of the coal Mines Engineering Workers Association for Jogta Fire Project Branch. He often represents the genuine grievances and demand of the members of the association which is not liked by the management and as such he has been victimised for his genuine trade union activities. The demand of the union that the management of Sijua Area of M/s. B.C.C.L. should place the concerned workman to Excavation Grade-D is justified. On the above facts it is prayed that the management be directed to place the concerned workman in Excavation Grade-B from the date he has been working as Pay Loader Operator and be paid all consequential benefits.

The case of the management is that a Pay Loader Operator is fixed in Excavation "Grade-D, C or B" depending upon the experience of the employee and the capacity of the Pay Loader which he operates. The Pay Loaders have been divided into 3 groups, named the first group being 2 C.M. capacity the second group between 2.4 C.M. capacity and the third group being above 4 C.M. capacity. The number of years of experience is also taken into consideration while fixing a Pay Loader Operator in a particular group. The fixation of different grades of pay loader operators and the promotion from one grade to next higher grade are decided as per the norms laid down by JBCCI's circular. The circulars are based on Joint Decision between the representatives of the management and the union and decision all the workmen covered under NCWA-II applicable in the Coal Industry. The concerned workman was working as Driver in Cat. V. He was put as Dumper Operator (Excavation) with effect from 7-1-1982 and was regularised as Dumper Operator in Grade-D with effect from 7-1-1984 after completion of 2 years' experience as Dumper Operator (Trainee), as per the norms of JBCCI circular. As per the norms of JBCCI circular a Pay Loader Operator has to be made in Grade-C before consideration for his promotion to Grade-B. The demand of the concerned workman for his promotion to Grade-B has no basis he does not operate any Pay Loader of more than 4 C.M. capacity and he has not completed the number of years of experience for consideration for his promotion to Grade-B. The management has denied the payment of difference of wages of Cat. V and Grade-B to the concerned workman from January, 1983 to December, 1983. On the above facts it is submitted that the demand of the union for fixation of the concerned workman in Grade B is not justified.

The point for decision is whether the concerned workman is entitled to be placed as Pay Loader Operator in Excavation Grade-B.

The workmen examined three witnesses and the management examined one witness in support of their respective case. The documents of the workmen have been marked Ext W-1 to W-4. The documents of the management have been marked Ext M-1 to M-1/2.

The grading job description etc of Excavation workmen is stated in Ext M-1. It will appear from para-12 of M-1 that a highly skilled workman having 5 years of experience capable of operating all types of pay loaders of capacity of 4 C.M. and above is to be placed in Grade-B. A skilled workman having 3 years experience of operating all types of Pay Loader capacity less than 4 C.M. is to be placed in Grade-C. Para-1 of Group I shows that a skilled workman

having 2 years experience in heavy equipment and in heavy vehicles capable of operating all types of pay Loaders of capacity of 2 C.M. and are to be placed in Grade-D.

Ext M-1 is the cadre scheme and promotion policy in respect of Excavation Grade. At page-6 of Ext. M-2 it will appear that Pay Loader Operator for Grade-III in Group-D is required to have 2 years experience in operation of Pay Loader of capacity of 2 C.M. and less and should be HEMM Trained. At page-5 a Pay Loader operator having experience of 3 years in operation of Pay Loader of less than 4 C.M. but more than 2 C.M. in Pay Loader Operator Grade-III is eligible for promotion to the post of Pay Loader Operator Grade-II. A Pay Loader of Grade-II having 5 years experience in operation of Pay Loader of capacity of 4 C.M. and above is eligible for promotion to Grade-I. The concerned workman WW-1 has stated that he has not gone through the circular relating to the promotion of Pay Loader Operator from Grade-D to Grade-C and from Grade-C to B. He has stated that the selection committee has selected him after interview and test and he was given appointment letter as trainee operator in Cat. V. A trainee operator is not Cat. V.

The revised basic wage structure which came into effect from 1-1-1983 is given in NCWA-III which shows that in the Excavation there are special, A, B, C, D and E grades and their wage structure is stated. The mode of promotion according to the cadre scheme is from Excavation Grade-E to excavation Grade-D and then from Excavation Grade-D to Excavation Grade-C and then from Excavation Grade-C to B. The concerned workman is admittedly in Grade-D and as such he can be promoted to Excavation Grade-C if he has fulfilled the experience and the qualification for promotion to Grade-C after holding a D.P.C. The concerned workman has not been as yet promoted to Excavation Grade-C and as such he is not entitled to Excavation Grade-B.

As stated above it appears from Ext. M-2 as what is required to be the minimum experience in existing grade for promotion to the higher grade. In case of Pay Loader Operator, the promotion is to be made on the basis of the number of years of experience and the capacity of the Pay Loader which is being operated by a Pay Loader Operator. It is nowhere stated by the concerned workman WW-1 that he is operating a Pay Loader of the capacity of more than 2 C.M. WW-2 who claims to be placed in Grade-B as Pay Loader Operator has stated that he along with 3 others were regularised in Technical Grade-B as Pay Loader operator as stated that the along with 3 others were regularised in Technical Grade-B vide Ext. M-3 dated 26-2-1983. In cross-examination he has stated that he was operating Terex Pay Loader of big size capacity of 2-1/2 tonnes and that all the persons regularised were operating the said pay loader. He has stated that there was only one Pay Loader in Mudidih colliery which according to him was of big size capacity. He has stated that there was one Pay Loader in Jogta Fire Project and that no coal was raised from the underground where Jogta Fire Project existed. He has stated that 2 other persons were working alongwith the concerned workman, as Pay Loader operator in Jogta Project, but he cannot say the grade in which those 2 Pay Loader Operators were placed. He has stated that the concerned workman has always worked in Jogta Fire Project and that this witness has not looked into the papers of the concerned workman relating to his grade and wages. It appears therefore from his evidence that the Pay loader being worked in Jogta Fire Project was of a capacity of less than the capacity of the terex Pay Loader being worked in colliery. He does not say if the two other pay loader operators working along with the concerned workman were placed in Grade higher to that of the grade of the concerned workman. WW-3 is working as Pay Loader Operators in Sendra Bansjora colliery and is placed in Grade-B. He has proved Ext. W-4 dated 28-2-83 by which he has been placed in Grade-B. From his cross-examination it will appear that formerly there was one Pay loader and presently there are 4 Pay loaders in Sendra Bansjora colliery. He has stated about the capacity of the first Pay loader but has not stated about the capacity of the other 4 Pay loaders. Thus if WW-3 was working on Pay loader of a capacity of 4 C.M. then he was quite entitled for Excavation Grade B. MWW-1



is the Project Officer of the Jogta Fire Project since 1979. He has stated that there was only one Pay loader in Jogta Fire Project which is of about 2 C.M. capacity and that all the Pay loader operators of Jogta Fire Project have been given Ex. Grade-D. In cross-examination he has stated that the Pay Loader of Sendra Bansjora and Mudidihi colliery are different capacity than the capacity of Pay Loader of Jogta Fire Project. He has stated that in Sendra Bansjora and Mudidihi colliery there is one Pay Loader of the capacity which is possessed in Jogta Fire Project. There is a Terex Pay Loader of higher capacity in Mudidihi colliery is clear from the evidence of WW-2 also. The evidence of MW-1 is very clear that Jogta Fire Project has one Pay Loader of 2 C.M. capacity and as such the concerned workman appears to have been given Grade-D. There is no evidence of the workmen that WW-2 and WW-3 are operating Pay Loader of less than 2 C.M. capacity. Even if there is Pay Loader of less than 2 C.M. capacity in Sendra Bansjora and Mudidihi colliery there are other pay loaders of higher capacity and as such if the Pay loader operators are working on all those Pay loaders of higher capacity they were placed in Grade-B.

In view of the test of the evidence regarding the experience and the capacity of the Pay loader being operated by the concerned workman it appears that the concerned workman is entitled to be placed in Excavation Grade-D as the Pay Loader being operated by him is of about 2 C.M. and according to the cadre scheme a Pay Loader Operator working on Pay Loader of less than 2 C.M. is to be placed in Excavation Grade-D.

The concerned workman has based his claim by comparing with the Pay Loaders of Mudidihi and Sendra Bansjora colliery which are also in Area No. V in which Jogta Fire Project is located. I have already discussed above that in those 2 collieries there were pay loader of higher capacity than the capacity of the Pay loader in Jogta Fire Project and as such the concerned workman cannot compare himself with the Pay Loader operators of Mudidihi and Sendra Bansjora colliery. The excavation Grade is to be given on the basis of the number of years of experience and the capacity of the Pay Loader being operated by a workman and according to the cadre scheme as the concerned workman is operating a Pay loader of less than 2 C.M. capacity he is entitled to Grade-B.

It has been argued that the concerned workman is claiming regularisation in Excavation Grade-B and not promotion in Excavation Grade-B. It is stated by the concerned workman WW-1 that after 1982 he was given the difference of wages between Cat. V and Grade-B for one year and as such he should be regularised in Excavation Grade-B. In support of his case 3 pay slips have been filed and exhibited as Ext. W-1 to W-1/2. Ext. W-1/1 is for the month of August, 1983 which shows that the concerned workman was given more basic wages than that of Cat. V or Grade-D and on its basis it is stated that he was being paid the difference of wages of Exev. Grade-B and as such he should be regularised in Excavation Grade-B. The two other pay slips namely Ext. W-1 is of October, 1983 and Ext. W-1/2 is of September, 1983 in which his pay was of the Cat. V. It will appear from the basic wage structure that 19.50 was the daily rate of wages of Cat. V in NCWA-II and that 0.72 p. was the annual increment. It appears that the concerned workman had got one increment and as such his basic became 20.22 P. as is stated in Ext. W-1 series. Although NCWA-III came into effect from 1-1-83. The memorandum of agreement of NCWA-III was dated 11-11-83 and as such during the period when the wages were paid to the concerned workmen vide Ext. W-1 series actual payment was being made in accordance with wage structure of NCWA-II. It appears no doubt, that the concerned workman had got higher wages than Cat. V in August, 1983 but even in that month his basic wage was Rs. 20.22 and subsequent wages slips of September and October, 1983 show that he was just paid the wages of Cat. V. Thus wage slips show that in month of August, the concerned workman had received more than wages of cat. V but in subsequent months of 1983 he was only getting the wages of Cat. V. The evidence of WW-1 that he was paid difference of wages of cat. V and Grade B for the entire year 1983 does not ap-

pear to be supported by his own documents. The payment of wages of more than cat. V to the concerned workman in one month will not entitle the concerned workman to claim regularisation in higher grade or in Grade-B.

In the result, I hold that the demand of coal Mines Engineering Workers Association that the management of Sijua Area V of M/s. B.C.C.L. should place the concerned workman Shri S. N. Kumar, Pay Loader Operator of Jogta Fire Project in Excavation Grade-B is not justified and consequently the concerned workman is entitled to no relief.

This is my Award.

I. N. SINHA, Presiding Officer

[No. L-20012/255/85-D.III(A)/IR(Coal-1)]

नई दिल्ली, 15 मार्च, 1989

श्री. प्र. 604.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, मैसर्स भारत कोकिंग कोल लिमिटेड की बैजना कोलियरी के प्रबन्धन में सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नं. 1, धनबाद के पंचाद को प्रकाशित करता है, जो केन्द्रीय सरकार को 6-3-1989 को प्राप्त हुआ था।

New Delhi, the 15th March, 1989

S.O. 604.—In pursuance of section 17 of the Industrial Disputes Act, 1947, (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 1, Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the M/s. Bharat Coking Coal Limited (Badjna Colliery) and their workmen, which was received by the Central Government on the 6-3-1989.

# ANNEXURE

## BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947.

Reference No. 60 of 1988

## PARTIES.

Employers in relation to the management of Badjna Colliery of M/s. E. C. Ltd.

AND

Their Workmen

## APPEARANCES :

For the Employers : Shri R. S. Murty, Advocate.  
(He was, however, absent on the date of hearing)

For the Workmen : Shri D. Mukherjee, Secretary, Bihar Colliery Kamgar Union.

STATE : Bihar

INDUSTRY : Coal

Dated, the 21st february, 1989

## AWARD

By Order No. L-20012/69/88-D. 3(A), dated, the 15th June, 1988, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of

sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal :

"Whether the action of the Management of Badjna Colliery of Nirsa Area of M/s. Eastern Coalfields Ltd., Dhanbad in dismissing of Ram Nath Yadav, U.G. Loader with effect from 9-8-1986 is justified ? If not, to what relief is the workman concerned entitled ?"

2. The case of the management of Badjna Colliery of Nirsa Area of M/s. Eastern Coalfields Ltd., Dhanbad, as appearing from the written statement submitted, details apart, is as follows :

The appropriate Government was pleased to refer the present dispute for adjudication by this Tribunal, but after the order of reference the matter for resolving the dispute was again taken up directly with the management by Sri K.S. Chatterjee, local M.L.A. and President of Bihar Pradesh Colliery Mazdoor Congress. As a consequence negotiation was held and a mutual acceptable and amicable settlement was reached on 7-11-87 on the following terms :

(a) Sri Ramnath Yadav will be reinstated in service as Underground Loader at Harijazam Colliery of Nirsa Area with immediate effect;

(b) Sri Ramnath Yadav will not be paid back wages for the idle period and the period of his idleness will be treated as leave without pay for the purpose of continuity of service and gratuity etc.

The memo of settlement on the aforesaid terms was signed by Sri K. S. Chatterjee, M.L.A. and President, Bihar Pradesh Colliery Mazdoor Congress and the representative of the Management. The workman concerned also signed the said settlement. The settlement has been implemented and Sri Yadav was allowed to resume duty and he is accordingly working as underground loader at Harijazam Colliery. Since the dispute has been resolved by amicable settlement there can no longer remain any dispute in the eye of law and the concerned workman has absolutely no grievance at all. The management has prayed that the present dispute may accordingly be disposed of by the Tribunal. But for reason if the aforesaid prayer is not accepted the employers submit that the concerned workman was working as underground loader in No. 29 Incline of Badjna Colliery of M/s. E.C. Ltd. On receipt of the report by the management about his misconduct he was issued with a chargesheet dated 25-7-86 by the Dy. C. M. E. Agent, Badjna Colliery on the following terms :

"It has been reported that you were on duty in the 1st shift on 25-7-86 between 8.00 A.M. and 4 P.M. While you came to the Attendance Room at about 10.15 A.M. and wanted to get your attendance marked, the Attendance Clerk refused to mark your attendance and you approached the Asstt. Manager, Sree K. N. Jha for marking your attendance. When Sree Jha told you that it is not possible to mark your attendance as you have come late, without the permission of the Agent and Manager, you went away and brought with you Sri Hira Garai, Sri Habibulla, Sree Nagina Dasad and abused Sree Jha saying 'MADARCHOD SALA DHANDLI KARTA HAI' and you also assaulted him with blows. Had he not run away, you would have beaten him to death. Your above action amounts to serious misconduct under para 17(1)(r) of Model Standing Order applicable in the Coal Mining Industry, which reads as under :—

17(1)(r).—Threatening, abusing or assaulting any superior or co-worker."

The concerned workman submitted his explanation dated 4-8-86 to the chargesheet which was duly considered by the Agent, Badjna Colliery. The Agent found the explanation unsatisfactory and accordingly he appointed Sri G. P. Singh, Senior Personnel Officer as Enquiry Officer to hold an

enquiry into the charges framed against him. The Enquiry Officer held the enquiry in which the concerned workman participated fully. The witnesses for the management were examined in presence of him and he was given full opportunity to cross-examine them. Thereafter he was given opportunity to make his statement. He could not, however, produce any witness in his defence. In fact, during the course of enquiry he begged apology for his misconduct. On the basis of enquiry held, the Enquiry Officer submitted his report finding him guilty of the charges framed against him. Dy. C. M. E. considered the report of the Enquiry Officer and proceedings of the enquiry and agreed with the findings. He recommended to the General Manager, Nirsa Area for the dismissal of the concerned workman from service, considering the gravity of misconduct proved against him. The General Manager, Nirsa Area also agreed with the findings of the Enquiry Officer and the recommendation of the Dy. C.M.E. Agent, Badjna Colliery and came to the conclusion that the concerned workman should be dismissed and accordingly he was dismissed from service. The chargesheet was issued under the provisions of the Model Standing Order applicable to the establishment in coal mines. The Agent of the colliery was competent authority to take disciplinary action against the concerned workman and dismissed him from service. However, the General Manager of Nirsa Area in which Badjna Colliery falls is also competent to dismiss the concerned workman from service because he was delegated the necessary powers by the Company. Besides, he was the Head of the Area and was also the chief officer of the Area and also a qualified Mining Engineer holding the post of Addl. C.M.E. In the circumstances the management has prayed that its action dismissing the concerned workman from service for grave misconduct proved against him is justified.

3. The case of the sponsoring union, namely, Bihar Colliery Kamgar Union, as appearing from the written statement filed, briefly stated, is as follows :

Sri Ram Nath Yadav had been working as permanent loader at Badjna Colliery since long with unblemished record of service. The management issued to him a false and frivolous chargesheet on 25-7-86 under the signature of an unauthorised person for allegedly assaulting and abusing K. N. Jha, Assistant Manager. The concerned workman denied the charge levelled against him emphatically. Although explanation submitted by the concerned workman was satisfactory, the management conducted a predetermined, invalid and irregular enquiry in which the concerned workman was neither afforded full opportunity to cross-examine witness for the management nor was he afforded any opportunity to produce his defence witness. That apart the Enquiry Officer was very much biased and prejudiced towards him and had acted at the instance of the management. Even in the invalid and irregular inquiry no charge was established against the concerned workman he was dismissed from service with effect from 9-8-86. The concerned workman represented to the management challenging the illegal and arbitrary dismissal order but without any effect. In the circumstances the union raised an industrial dispute with the hope for amicable settlement, but due to the adamant attitude of the management the conciliation proceeding ended in failure. In the circumstances, the present dispute has been referred for adjudication to the Tribunal by the appropriate Government.

4. In the rejoinder to the written statement of the sponsoring union the management has denied each and every allegation, but admitted that the concerned workman was working as permanent underground loader at Badjna Colliery for some years.

5. The parties arrayed had neither examined any witness nor produced any documentary evidence. However, upon the admission made in the pleadings, it remains an unimpeachable fact that the concerned workman was working as permanent underground loader at Badjna Colliery. It also remains undeniable that the concerned workman was visited with a chargesheet for abusing and assaulting K. N. Jha, Assistant Manager on 25-7-86 between 8 A.M. to 4 P.M. which falls within the purview of clause 17(1)(r) of the Model Standing Order applicable to establishment in coal mines. There is no dispute that the concerned workman was found guilty of the charges levelled against him in domestic enquiry and was dismissed from service with effect from 9-8-86. The

sponsoring union has assailed the domestic enquiry as irregular and illegal and asserted that the concerned workman was not given full and reasonable opportunity to cross-examine the witnesses for the management and to produce witnesses in support of his defence.

6. It appears that the management has asserted that the dispute has since been settled between the management and the concerned workman at the instance of Sri K. S. Chatterjee, local M.L.A. and the President of Bihar Pradesh Colliery Mazdoor Congress on the following terms :

- (a) Sri Ramnath Yadav will be reinstated in service as underground loader at Harluzam Colliery of Nirsu Area with immediate effect,
- (b) Sri Ramnath Yadav will not be paid back wages for the idle period and the period of his idleness will be treated as leave without pay for the purpose of continuity of service and gratuity etc.

The management has further asserted that both Sri Chatterjee and the concerned workman signed the memorandum of settlement, that the settlement has been implemented, that the concerned workman was allowed to resume his duty and that he is accordingly working as underground loader at Harluzam Colliery..

Sri D. Mukherjee, representative of the sponsoring union has submitted that he has got no further instruction from the concerned workman who has been reportedly reinstated in service.

7. Since the matter has been amicably resolved there is no further scope for adjudication in the matter.

8. Accordingly, the following award is rendered the present reference be disposed of on the basis of re-instatement of the concerned workman in service without back wages for the idle period and the period of his idleness will be treated as leave without pay for the purpose of continuity of service and gratuity etc. as per the terms and conditions as laid down in the memorandum of settlement between the parties.

S. K. MITTAL, Presiding Officer  
[No. L-20012/69/88-D III(A)|IR(Coal-I)]

का. आ. 605.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, मैसर्स भारत कोकिंग कोल लि. की सुरासहीत कोलियरी के प्रबन्धन से सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिनियम, सं. 2, धारा 2 के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-3-1989 को प्राप्त हुआ था।

S.O. 605.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial dispute between the employers in relation to the M/s. Bharat Coking Coal Limited Muraidih Colliery and their workmen, which was received by the Central Government on the 6.3.89.

#### ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) T DHANBAD.

Reference No. 111 of 1987

In the matter of an industrial dispute under Section 10(1)(d) of the I. D. Act, 1947.

#### PARTIES :

Employers in relation to the management of Murraidih Colliery of Messrs. Bharat Coking Coal Limited and their workmen.

#### APPEARANCES :

On behalf of the workmen Shri M.P. Singh, Secretary,  
R.C.M.S.

On behalf of the employers : Shri R. S. Murthy Advocate.  
STATE : Bihar INDUSTRY : Coal

Dated, Dhanbad, the 24th February, 1989

#### AWARD

The Govt. of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012 (265)/86-D. III(A), dated, the 30th March, 1987.

#### SCHEDULE

"Whether the demand of Rashtriya Colliery Mazdoor Sangh that the management of Muraidih Colliery of M/s. Bharat Coking Coal Limited should regularise their workman, Shri Haldhar Rawani as Tripman/Dumpman in an appropriate grade with protection of minimum guaranteed wages is justified? If so, to what relief is the said workman entitled?"

In this case none of the parties filed their respective W.S. But subsequently both the parties appeared before me and filed a Joint compromise petition. I heard the parties on the said petition of compromise and I do find that the terms contained therein are fair, proper and beneficial to both the parties. Accordingly I accept the same and pass an Award in terms of the joint compromise petition which forms part of the Award as Annexure.

L. N. SINHA, Presiding Officer  
[No. L-20012/265/86-D III(A)|IR(Coal-I)]

#### ANNEXURE 'A'

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, DHANBAD

In the matter of Reference No. 111 of 1987

#### PARTIES :

Employers in relation to the Management of Muraidih Colliery of M/s. Bharat Coking Coal Ltd. P.O. Nawagarh, Dist. Dhanbad.

#### AND

The Workmen.

#### JOINT COMPROMISE PETITION OF EMPLOYERS AND WORKMEN

The above mentioned employers and workmen most respectfully beg to submit jointly as follows :—

- (1) That the employers and the workmen/Union concerned have jointly negotiated the matter covered by the aforesaid reference with a view to arriving at an amicable and mutually acceptable overall settlement/agreement.

- (2) That as a result of such negotiations between the two parties the employers and the workmen have agreed to settle the matter covered by the above reference on the following terms and conditions :—

- (a) It is agreed that the Management shall place Sri Haldhar Rawani in the Post of Tripman/Dumpman in Clerical Grade-III with effect from 1-4-88 and fix his basic pay in the pay scale of that Post i.e. the Clerical Grade-III at the stage of Rs. 648/- (625-23-940) from 1-4-88. His date of Annual Increment will not be changed.

(b) It is agreed that for the period prior to the date referred to in clause (a) above the workmen concerned will not be entitled to any benefits.

(c) It is agreed that this is an overall settlement in full and final settlement of all the claims of the workman concerned and the sponsoring Union arising out of the aforesaid reference.

(3) That the employers and workmen/sponsoring Union hereby declare that they consider the above terms of settlement as fair, just and reasonable to both the parties.

In view of the above agreement/Settlement, the employers as well as the Workmen/Sponsoring Union jointly pray that the Hon'ble Tribunal may be pleased to dispose of the reference in terms of the aforesaid agreement/settlement and give an award accordingly.

Sd./-

(Mahendra Pd. Singh)

Secretary, R.C.M.S.

For & on behalf of workmen.

Sd./-

(Haldhar Rawani)

workman concerned.

Sd./-

(Sign. Illegible)

General Manager,

Darora Area, Area No. 1,

Bharat Coking Coal Ltd.,

for and on behalf of Employers.

Sd./-

(V. R. Joshi)

Dy. Chief Pers. Manager,

Darora Area No. 1,

Bharat Coking Ltd.

for and on behalf of Employers.

Sd./-

(Raj. S. Murthy)

Advocate

for and on behalf of Employers.

Witnesses :-

1. Sd/-

2. Sd/-

Date 30-12-88

का. प्र. 606.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुमरण में केंद्रीय सरकार, मेमर्स भारत कोकिंग कोल लि., की नेतृत्वाधीन कोलियरी के प्रबन्धन में सम्बद्ध नियोजकों और उनके कर्मचारियों के बीच, धनबाद में निश्चित औद्योगिक विवाद में केंद्रीय सरकार औद्योगिक अधिकरण, नं. 2, धनबाद के पंचाट को प्रकाशित करती है, जो केंद्रीय सरकार को 6-3-1989 को प्राप्त हुआ था ।

S.O. 606.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 2 Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the M/s. Bharat Coking Coal Limited Teturiya Colliery and their workmen, which was received by the Central Government on the 6th March, 1989.

#### ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

Reference No. 246 of 1987

In the matter of an industrial dispute under Section 10(1)(d) of the I.D. Act, 1947

#### PARTIES:

Employers in relation to the management of Teturiya Colliery of M/s. Bharat Coking Coal Limited

AND

Their workmen

#### APPEARANCES:

On behalf of the workmen—Shri Arjun Singh, Secretary, Koyla Ispat Mazdoor Panchayat.

On behalf of the employers—Shri S. P. Singh, Personnel Manager.

STATE : Bihar.

INDUSTRY : Coal

Dhanbad, the 24th February, 1989

#### AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012(52)/87-D. III(A), dated the 31st August, 1987.

#### SCHEDULE

"Whether the action of the management of Teturiya colliery of M/s. BCCL in refusing to give employment to Shri Krishna Bhuiya, the dependant son of the deceased workman, late Smt. Fagooni, wagon loader as per clause 9.4.2 of the NCWA-III is justified? If not, to what relief the dependent son is entitled?"

In this case only the workmen filed his W.S. The management did not file his W.S. But subsequently both the parties appeared before me and filed a petition of compromise. I heard both the parties on the said petition of compromise and I do find that the terms contained therein are fair, proper and beneficial to both the parties. Accordingly I accept the same and pass an Award in terms of the compromise petition which forms part of the Award as Annexure.

I. N. SINHA, Presiding Officer

[No. L-20012/52/87-B. III(A)/IR (Coal-I)]

K. J. DYVA PRASAD, Desk Officer

#### ANNEXURE A

BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2 AT DHANBAD

Reference No. 246/87

Employers in relation to the management of Teturiya Colliery of M/s. Bharat Coking Coal Limited;

AND

Their Workmen.

#### PETITION OF COMPROMISE

The humble petition on behalf of the parties to the above reference most respectfully sheweth :-

1. That the Central Government by notification No. L-20012(52) dated 31st August, 1987 has been pleased to refer the present dispute on the following issue :-

#### "THE SCHEDULE"

"Whether the action of the management of Teturiya Colliery of M/s. Bharat Coking Coal Ltd. in refusing to give employment to Shri Krishna Bhuiya the dependent of the deceased workman, late Smt. Fagooni Wagon Loader as per clause 9.4.2 of the NCWA-III is justified? If not, to what relief the dependent son is entitled?"

2. That the parties have amicably settled the dispute on the following terms :-

#### TERMS OF SETTLEMENT

(A) That, it is agreed that Shri Krishna Bhuiya S/o the deceased workman late Fagooni shall be offered

employment as Badli Miner/loader after production of valid document to establish his genuineness for employment.

(B) That in support of proof of genuinity, Shri Krishna Bhuia will produce photographs duly attested by the Mukhiya of the village to which he belongs together with the certificate as regards to correctness of his identity. The certificate and the photographs should also bear the certificate of the BDO of the Block within which the village situated. He will submit an affidavit regarding his genuinity of identity.

(C) That Shri Krishna Bhuia will be examined by Medical Board for determination of his suitability for the job of Miners/Loaders as well as for assessment of his age. In case he will be medically unfit or above the age of 30 years, he will not be taken in the employment.

(D) That the management will have right to terminate his service in case any of his declaration will be found to be wrong or he is not genuine dependent son of late Smt. Fagooni Bhuini.

3. That in view of the above settlement nothing remains to be adjudicated.

Under the facts and circumstances stated above the Hon'ble Tribunal will be graciously pleased to accept the settlement as fair and proper and be pleased to pass the Award in terms of the settlement.

For the Employer :

Sd/-

General Manager

Govindpur Area

Sd/-

(S. P. SINGH)

Personnel Manager,

Govindpur Area

Witnesses :

1. Sd/-

2. Sd/-

3. Sd/-

For the Workmen :

Sd/-

(Arjun Singh)

Secretary,

Kovala Ispat Mazdoor Panchayat

नई दिल्ली, 10 फरवरी, 1989

का. आ. 607.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इलाहाबाद बैंक के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को प्राप्त हुआ था।

New Delhi, the 10th February, 1989

SO. 607.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure in the industrial dispute between the employers in relation to the Allahabad Bank and their workmen, which was received by the Central Government.

786 GI/89-4

## ANNEXURE

BEFORE SHRI ARJAN DEV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-  
CUM-LABOUR COURT, KANPUR.

Industrial Dispute No. 90 of 1987

In the matter of dispute between :

Reference No L-12012/362/86-D.II(A)

Dt : 22-7-1987

Shri A. K. Khare, Secretary, All India Bank Employees Association, 11/18, Souterganj, Kanpur-208001.

AND

The Manager, Allahabad Bank, Kidwai Nagar, Kanpur,

## AWARD

1. The Central Government, Ministry of Labour, vide its notification no L-12012/362/86-D. II(A) dt. 22-7-1987, has referred the following dispute for adjudication to this Tribunal for adjudication:—

“Whether the action of the management of Allahabad Bank in terminating the services of Shri Shailendra Singh, Ex-Peon-cum-Farrash w.e.f. 14-11-1982 is justified? If not, to what relief the concerned workmen is entitled?”

2. On 25-10-88, the instant case was fixed for filing settlement of the parties, but from the side of the management none appeared being Holiday in the Banking Industry on account of being Barawafat. As such 30-11-88 was fixed for filing settlement or in the alternative for written statement.

3. On 30-11-88 parties filed settlement before the Tribunal in the case. The contents of the settlements were duly verified before me by the parties concerned. The terms of settlement is as under :—

(i) It is agreed that Sri Shailendra Singh S/o Sri Ram Laxhan Singh will be absorbed afresh in the Bank's service on production as Peon-cum-Farrash on the initial basic pay in the cadre against a sanctioned vacancy within a month of this settlement.

(ii) It is also agreed that no other benefits/wages/continuity of service etc. for the period of past temporary engagement will be allowed to the said Sri Shailendra Singh.

(iii) That thus this fully and finally resolves the entire matter of dispute under reference.

4. Looking to the requests of the parties the reference is decided in terms of settlement.

5. Reference is answered accordingly.

[No. L-12012/362/86-D. II(A)]

ARJAN DEV, Presiding Officer

का. आ. 608.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक आफ बड़ोदा के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में औद्योगिक अधिकरण, मद्रास के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को प्राप्त हुआ था।

S.O. 608.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Madras as shown in the Annexure in the industrial dispute between the employers in relation to the Bank of Baroda and their workmen, which was received by the Central Government.

## ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMILNADU,  
MADRAS

Wednesday the 7th day of December, 1988

Industrial Dispute No. 80 of 1984

In the matter of the dispute for adjudication under Section 10(1)(d) of the Industrial Disputes Act 1947 the workmen and the Management of Bank of Baroda, Madras-2.

## BETWEEN

The workmen represented by The General Secretary, Bank of Baroda Employees Union, 31, Moore Street, Madras-1.

## AND

The Regional Manager,  
Bank of Baroda, Regional Office (MCR)  
Vummidars Shopping Centre,  
P.B. No. 3743, 811, Anna Salai, Madras-2.

Reference : Order No. L-12011/19/84-D II-A, dt. 30-10-84  
of the Ministry of Labour and Rehabilitation, Department of Labour, Govt. of India.

This dispute coming on for final hearing on Friday the 23rd day of September, 1988 upon perusing the reference, claim and counter statements and all other material papers on record and upon hearing the arguments of Tvl. N. G. R. Prasad and S. Vidyannathan for Tvl. Row & Reddy, advocates appearing for the workmen and of Thiru S. Jayaraman, Advocate for the management and this dispute having stood over till this day for consideration, this Tribunal made the following.

## AWARD

This dispute between the workmen and the Management of Bank of Baroda, Madras-2 arises out of a reference under Section 10(1)(d) of the Industrial Disputes Act 1947 by the Government of India in its order No. L. 12011/19/84-DIIA, dated 30-10-84 of the Ministry of Labour, for adjudication of the following issue :

"Whether the action of the management of Bank of Baroda Madras City Region, Madras in denying promotion as Special Assistant to clerical Staff working in Pondicherry Branch as per clause 13-1 of the Memorandum of Settlement dated 22-9-1977 is justified? If not to what relief are the workmen entitled?"

2. The averments in the claim statement of the Petitioner Union are that the respondent-Bank is a nationalised Bank and the service conditions of the employees are covered by Awards and Bi-partite settlements. Regarding promotion of Clerks to the post of Officers and to the post of Special Assistants there was a settlement in the year 1976 which was subsequently incorporated in the Settlement dated 22-9-1977 also between the management and the recognised union. Under Clause 13 of the Settlement, the Bank agreed to promote clerical staff to the Special Assistants cadre in the ratio of 15% of the internal promotions to Officers' cadre. If there has no sufficient number of promotions warranting promotion of atleast one Special Assistant in the State or Administrative Region of the Bank which is smaller the Bank agreed to promote one Special Assistant on usual terms. Under Clause 13.6 of the settlement for the purpose of considering seniority all employees in the clerical cadre in the state or the Administrative Region of the Bank whichever is smaller was to be considered as the unit for the purpose of promotion as Special Assistant. Till March 1981, Tamilnadu State and Pondicherry formed one Administrative unit or region. Subsequently, the Administrative Unit was split up into two, one consisting of Madras City, Chingleput South Arcot and North Arcot districts and Pondicherry and the other consisting of the remaining districts in Tamilnadu. While so, in the year 1977 one Thiru T. R. Narasimhan, a Clerk working in the Pondicherry Branch of the Bank was not promoted as Special Assistant

even though he was number one in the seniority list of clerks in the then Tamilnadu Administrative Unit of the Bank consisting of Branches in Tamilnadu State including Pondicherry. Instead one Thiru D. S. Laxmanan who was working in Madras City Branch was promoted. When approached the management, the union was told that for the purpose of promotion Pondicherry was considered as a Separate State and that since no promotion had been effected in Pondicherry to Officers cadre, there was naturally no promotion to the Special Assistant cadre. In 1978, Thiru T. R. Narasimhan was promoted as Special Assistant in Pondicherry. In 1982 when vacancies arose in Pondicherry, clerks were promoted as Officers. No clerk was promoted as Special Assistant in Pondicherry. Thus the management has violated clause 13.1 of the settlement. The management took a stand that Pondicherry was only a Union Territory and it was a part of the Administrative Unit of Madras City Region and since the Region was a smaller entity as compared to the State of Tamilnadu, the Madras City Region was taken as a unit for the purpose of promotion to the Officers cadre. The stand now taken by the management is diametrically opposed to the stand taken by them in the year 1977 when Narasimhan, a clerk working in the Pondicherry Branch was not promoted as Special cadre Assistant. When interest free loan was given to the employees of the Bank throughout Tamilnadu on account of drought the management charged interest at the rate of 11.4% for the loan granted to the employees in Pondicherry on the ground that Pondicherry is a separate State. Regarding rental facilities in the matter of inter-state transfer, the Management has granted the same rating Pondicherry a separate State. The Management in order to cover up their lapses for the purpose of promotion, Pondicherry State is treated a part of Tamilnadu which stand is unreasonable.

3. The Respondent-Management in their counter statement states that the promotion is a Management function and the court should not ordinarily interfere with in the matters of promotion. The Respondent-Bank entered into a settlement with the union on 22-9-1977 under Section 12(3) of the Industrial Disputes Act 1947 and as per clause 13 of the settlement, there was no sufficient number of promotions to the Officers cadre, warranting promotion of atleast one special assistant in the State or the Administrative Region of the Bank whichever is smaller, the Bank agreed to promote one Senior Clerk on usual norms. Thus for the purpose of state or the Administrative Region of the Bank, whichever is smaller, is considered as an unit for considering seniority from amongst the employees in the clerical cadre. In March, 1981, the Region was bifurcated by the Bank into two Administrative Regions namely (1) the Madras City Region comprising of all branches in Madras city, the Districts of Chingleput North Arcot, South Arcot and the union Territory of Pondicherry and (2) the Tamilnadu Region comprising of other branches located in other districts of Tamilnadu. This bank has only one branch in the Union Territory of Pondicherry and the Union Territory of Pondicherry is part of Madras City Region for all administrative purposes. Consequently, Pondicherry has been considered as part of Madras City Region for the purpose of promotion from clerical to Special Assistant Cadre as well. As per the terms of Settlement dated 22-9-1977, the unit for making assignment of duties for Special Assistants is either the state or the Administrative Region of the Bank whichever is smaller. Pondicherry is neither a State nor an independent Administrative Region of the Bank. Hence the Respondent has not violated the provisions of clause 13.1 of the settlement and thereby denied promotion as Special Assistants to clerical staff working in Pondicherry. The Respondent states the allegation of the union that one Thiru T. R. Narasimhan, a clerk in Pondicherry Branch was not promoted as a Special Assistant even though he was numbered as one in the seniority list of the clerks is not correct since at that time no promotion had been effected in the Union Territory of Pondicherry to the Officers cadre and therefore there was no promotion to the Special Assistants cadre also. Subsequently, in 1978 when the promotions to officers cadre in the Union Territory of Pondicherry arose, Thiru T. R. Narasimhan was promoted. There is no anomaly in the appointment of Thiru Narasimhan as a Special Assistant in the year 1978. It is not correct to state the Respondent took two inconsistent and different stands and it is not the stand of the Respondent that the Union Territory of Pondicherry is

Px. W1 Extract of clause 13 of the Memo of Sett. dt. 22-9-87 reg. proportion of clerks as Special Asst - copy.



W2 12-9-83 Petn-Union Ir. to the ALC(C) Ms about non-implementation of promotion policy sett. dt. 22-9-77 (copy).

W3 24-11-83 Reply by responding mgt. to the Ex. W2

W4 2-2-84 Petitioner-Unions Ir. to the ALC(C) I Ms. eg reg. non implementation of promotion policy sett-copy.

W5 3-2-84 Minutes of conciliation proceedings.

W6 4/7-4-84 conciliation failure report-copy.

For Management.

Ex. M1 22-9-77 Memo of sett. between Bank of Baroda and All India Bank of Baroda Employees Federation Central Office, Bombay.

Sd. K. NATARAJAN, Industrial Tribunal  
[No. L-12011/19/84-D.II(A)]

का. घा. 609.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अन्वय में, केन्द्रीय सरकार बैंक ऑफ महाराष्ट्र के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नं. 2 बम्बई, के पंचाद को प्रकाशित करती है, जो केन्द्रीय सरकार को प्राप्त हुआ था।

New Delhi, the 10th February, 1989

S.O. 609.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Indl. Tribunal No. 3, Bombay as shown in the Annexure in the industrial dispute between the employers in relation to the Bank of Maharashtra and their workmen, which was received by the Central Government.

#### ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2 BOMBAY

Reference No. CGIT-2/1 of 1987

#### PARTIES :

Employer in relation to the Management of Bank of Maharashtra.

#### AND

Their Workmen.

#### APPEARANCES :

For the Employer.—Shri R. M. Nijampurkar, Officer in Personnel Deptt.

For the Workman.—Shri S. T. Sahasrabudhe, General Secretary.

INDUSTRY : Banking

STATE : Maharashtra.

Bombay, dated the 10th January, 1989

#### AWARD

The Central Government by their Order No. L-12012/301/85-D.II(A), dated 13-1-1987 have referred the following industrial dispute to this Tribunal for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 :—

"Whether the action of the management of Bank of Maharashtra, Divisional Office, Nagpur in withdrawing the post of Telex Operator carrying monthly allowance of Rs. 126 from Shri S. T. Sahasrabudhe, Typist is justified? If not, to what relief is the workman concerned entitled?"

2. The case of the Union of the Maharashtra Bank Employees as disclosed from their claim statement (Ex. 2(W)) in short is thus :—

(i) Shri S. T. Sahasrabudhe was asked by the Bank to work as Telex Operator, a post carrying special allowance of Rs. 126 per month, by the Office Order dated 30-10-1984. This post at the Divisional Office at Nagpur had fallen vacant, as one Shri K. G. Hadaoo was transferred from that office to Shankar-nagar Branch of the Bank. As per the Bank's order Shri Sahasrabudhe was to hold the post of Telex Operator till such time Shri Hadaoo would resume his duties at the Divisional Office. Shri Sahasrabudhe was allotted this post as he was the senior-most employee eligible at the Divisional Office for the said post. The said post was not to be withdrawn from Shri Sahasrabudhe, as per the Bank's order, in case Shri Hadaoo was not to resume back in the Divisional office of the Bank. However the said post was withdrawn from Shri Sahasrabudhe without giving the necessary notice as required under Section 9A of the Industrial Disputes Act and without giving him any opportunity to give his explanation in the matter. The said post was withdrawn by the Office Order dated 20-4-1985.

(ii) One Shri N. D. Dangore was senior to Shri Sahasrabudhe by one month and he would have been ordinarily entitled to the said post by virtue of his seniority in the Divisional Office, at Nagpur. However, in the past as Shri Dangore had refused to work as a Typist, the Bank considered him ineligible for the post of Telex Operator. Thereafter Shri Dangore raised an industrial dispute before the Assistant Labour Commissioner (C), Nagpur. The conciliation proceedings ended in failure. The Central Government did not thereafter refer any industrial dispute to the Tribunal. Therefore, when the post of Telex Operator was withdrawn from Shri Sahasrabudhe and was allotted to Shri Dangore by Office Order dated 20-4-1985, Shri Sahasrabudhe was shocked by it. That order was illegal and was doing injustice to Shri Sahasrabudhe, as he was to continue holding that post till Shri Hadaoo was to resume back in the Divisional Office.

(iii) It is further alleged by the Union thus :—The illegal and arbitrary actions of the Bank did not end here. Shri Dangore who was holding the post of Telex Operator by order dated 20-4-1985 was transferred from the Divisional office to the office of the Assistant General Manager, Nagpur, on administrative ground by the middle of June, 1985. On his transfer, Shri Sahasrabudhe became eligible, he being the senior-most employee in the Divisional Manager's office, and as such he should have been allotted the post of Telex Operator. However, the Bank management allowed Shri Dangore, even after his transfer to the office of the Assistant General Manager, Nagpur to work as Telex Operator, in supersession of Shri Sahasrabudhe who belongs to a rival union. Withdrawing the post of Telex Operator, a post carrying special allowance, amounted to reduction in wages and the Bank was duty bound to give notice under Section 9A of the Industrial Disputes Act to Shri Sahasrabudhe before the said post was withdrawn from him. Shri Sahasrabudhe was in the forefront of trade union activity in his capacity as the Deputy General Secretary of the Union of Maharashtra Bank Employees. Shri Sahasrabudhe had on many occasions taken up cudgels on behalf of that Union. Hence, the said action was directed solely to brow beat Shri Sahasrabudhe whose continuous espousal of the employees' cause was becoming a source of embarrassment to the Bank management. The Union therefore, prayed that the action of the Bank in withdrawing the post of Telex Operator from Shri Sahasrabudhe is illegal and it be set aside and that the said post be allotted to Shri Sahasrabudhe and he be also awarded the wages he had lost.



3. The case of the Management of Bank as disclosed from the written statement (Ex. 3(M)), in short is thus :—

- (i) The present dispute is not an industrial dispute as contemplated under Section 10 of the Industrial Disputes Act, and that it is an individual grievance of the concerned workman Shri Sahasrabudhe. As such the dispute in question deserves to be dismissed on that ground alone. The Bank further contended that the said Union be directed to prove that the said employee Shri Sahasrabudhe had approached it for the redressal of the grievance and the Union had passed a resolution to take up the matter at union level. The Bank then further contended as regards the merits of the case thus :—

Shri K. G. Hedao was holding the post of Telex Operator, at Divisional Office, Nagpur. Shri Dangore challenged the action of the Bank on the ground that Shri Hedao did not have the proficiency in typing, which was essential for holding the post of Telex Operator. Shri Dangore raised an industrial dispute before the Assistant Labour Commissioner (C), Nagpur. The management took the stand that the Divisional Manager Nagpur, conducted the test of typing and when it was observed that Shri Hedao had a speed of 40 words per minute and he was the senior-most employee in the Divisional office, the post of Telex Operator was allotted to him. The Assistant Labour Commissioner (C) submitted his failure of conciliation report to the Central Government. The Central Government thereafter decided not to refer the dispute to the Tribunal regarding the dispute between Shri Dangore and Shri Hedao. Thereafter, Shri Hedao, who was allotted the post of Telex Operator in the Divisional Office, Nagpur, was transferred from that Divisional Office to Shankar Nagar Branch as Special Assistant. Therefore, the post of Telex Operator fell vacant in the Divisional Office, Nagpur. The Divisional Manager, Nagpur, initially allotted that post to Shri Sahasrabudhe on temporary basis. Shri Dangore made representation and claimed the post of Telex Operator. The matter was referred to the Central office of the Bank. It was found that Shri Dangore is the senior-most employee, has proficiency in typing, the said post was withdrawn from Shri Sahasrabudhe, and was allotted to Shri Dangore. In fact the post of Telex Operator was allotted to Shri Sahasrabudhe temporarily.

- (ii) Thereafter Shri Sahasrabudhe raised an industrial dispute before the Assistant Labour Commissioner (C), Nagpur which ended in failure. In the meanwhile the office of the Assistant General Manager, Nagpur, was shifted to the first floor of the same building, where the Telex Machine is installed. Hence it was found necessary to transfer Shri Dangore to the office of the Assistant General Manager on administrative grounds along with the Telex Machine. Shri Sahasrabudhe had no permanent right over the post of Telex Operator, when it was withdrawn from him, and was allotted to Shri Dangore. Shri Dangore had a better claim over that post. Withdrawing the post of Telex Operator from Shri Sahasrabudhe cannot be treated as a change in terms and conditions of service adversely affecting him, and hence no notice under Section 9A of the said Act was given to Shri Sahasrabudhe, and he was not expected to be heard in the matter while withdrawing the said post and allotting the same to other employee. The Bank did not at all take into consideration to which Union a particular employee belongs. The order was passed purely on administrative grounds taking into consideration the seniority of the employee concerned.

- (iii) The Divisional Manager had firstly issued the order in favour of Shri Sahasrabudhe allotting the post of Telex Operator to him on the presumption that Shri Sahasrabudhe was the senior-most employee in the office. However, later on when it was found that Shri Dangore was senior to Shri Sahasrabudhe and had proficiency in typing, the said post was withdrawn from Shri Sahasrabudhe and was allotted to Shri Dangore.

- (iv) The Bank further contended thus : Four offices of the Bank viz. Offices of Asstt. General Manager, Nagpur, Divisional Manager, Nagpur, Regional Manager, Chandrapur, and Sitabuldi branch are situated in one building and there is one Telex Machine for the use of these offices. Since the office of the Asstt. General Manager was shifted to the first floor it was considered necessary that the working of the Telex Machine be supervised and controlled by the Asstt. General Manager, Nagpur, and hence the Telex Machine along with its operator i.e. Shri Dangore were transferred from the Divisional office to the Assistant General Manager's office, Nagpur. Shri Dangore had better claim even when he was working in the office of the Divisional Manager, Nagpur, and as such there was no question of withdrawing that post from Shri Dangore and allotting to Shri Sahasrabudhe on transfer of Shri Dangore from the Divisional Manager's office to the Assistant General Manager's office, Nagpur, situated in the same building. The Bank lastly contended that the claim of the Union is not just and proper, and it be dismissed.

4. The Issues framed on the above pleadings at Ex. 4 are :—

- (1) Whether the Maharashtra Bank Employees Union proves that the action of the said Bank in withdrawing the post of Telex Operator from Shri S. T. Sahasrabudhe and allotting it to Shri N. D. Dangore, was illegal ?
  - (2) Whether the Union proves that Shri Sahasrabudhe not entitled to the post of the Telex Operator on transfer of Shri Dangore to the office of the Asstt. General Manager, Nagpur ?
  - (3) Whether the Union proves that by withdrawing the post of Telex Operator from Shri Sahasrabudhe, the Bank has committed a breach of the provisions contained in Sec. 9A of the I.D. Act ?
  - (4) Whether the Bank management proves that the dispute in question is not an industrial dispute as contemplated under Sec. 10 of the I.D. Act, but that it is the individual grievance of Shri Sahasrabudhe ?
  - (5) Whether the said Union is not competent to espouse the present cause on behalf of Shri Sahasrabudhe ?
  - (6) To what relief, if any, Shri Sahasrabudhe is entitled ?
  - (7) What Award ?
5. My findings on the said Issues are :—
- (1) No
  - (2) Yes, in the Div. office.
  - (3) No
  - (4) No
  - (5) Competent to espouse the present cause.
  - (6) Entitled to no relief.
  - (7) As per final order.

## REASONS

## ISSUES Nos. 4 and 5 :

6. It is contended by the management in its written statement that the dispute in question is not an industrial dispute as contemplated under section 10 of the Industrial Disputes Act, but that it is an individual grievance of Shri Sahasrabudhe, and further that the said Union is not competent to espouse the present cause on behalf of Shri Sahasrabudhe. However, at the time of arguments, the representative for the Bank management conceded that the dispute in question is an industrial dispute and that the above said Union is competent to espouse the present cause on behalf of Shri Sahasrabudhe. The contentions on issue Nos. 4 and 5 were not then pressed on behalf of the management. Therefore, Issue No. 4 is found in the negative, and the finding on Issue No. 5 is that the said Union is competent to espouse the cause in question.

7. By the Office Order dated 30-10-1984 (Ex. 7/W) Shri Sahasrabudhe was posted as Telex Operator with effect from 31-10-1984. By the Office Order dated 20-4-1985 (Ex. 8/W) the post of Telex Operator was withdrawn from Shri Sahasrabudhe and Shri Dangore was asked to work as Telex Operator with effect from 20-4-1985. It is contended by the Union that by withdrawing the post of Telex Operator from Shri Sahasrabudhe the company has committed breach of the provisions of Section 9A of the Industrial Disputes Act, as no notice as required under the said provisions was given to him before the post of Telex Operator was withdrawn from him by the Office Order dated 20-4-1985. It will be seen from the Office Order dated 30-10-1984 (Ex. 7/W) under which Shri Sahasrabudhe was asked to work as Telex Operator, that he was to hold that post till Shri K. G. Hedao, Telex Operator reports back to duties in that office. It is quite clear that the post of Telex Operator was not allotted to Shri Sahasrabudhe on permanent basis. He was asked to work as Telex Operator for a temporary period, and as such, I find that no notice under Section 9A of the said Act was necessary in the matter. Issue No. 3 is found in the negative.

## Issue No. 1

8. This is the material Issue in the present case. Initially Shri Hedao was holding the post of Telex Operator in the Divisional Office of the Bank at Nagpur. Shri Hedao was transferred from that office to Shankarnagar Branch as a Special Assistant. As the post of Telex Operator was lying vacant, the Bank by Office Order dated 30-10-1984 (Ex. 7/W) asked Shri Sahasrabudhe to work as Telex Operator from 31-10-1984 till Shri Hedao reports back for duties in that office. As noted above, Shri Hedao was promoted as Special Assistant and was transferred to Shankarnagar Branch. There was no likelihood of Shri Hedao again reporting back to the office of the Divisional Manager as a Telex Operator. Shri Sahasrabudhe worked as Telex Operator for about six months and thereafter by order dated 20-4-1985 (Ex. 8/W) the said post of Telex Operator was withdrawn from Shri Sahasrabudhe and was allotted to Shri Dangore. According to the Union this action on the part of the Bank management in withdrawing the post of Telex Operator, which was carrying a special allowance of Rs. 126 per month and allotting it to Shri Dangore, was unjust and illegal. I find that the action in the matter taken by the management is not unjust and illegal. Admittedly, Shri Dangore was senior to Shri Sahasrabudhe by one month in service. As per the Bank's circular dated 5-8-1974 (Ex. 11/W), para 7, 'that in the event of a post carrying allowance falling vacant, the next eligible senior person in that cadre should be asked to do that job'. As noted above, Shri Dangore was senior to Shri Sahasrabudhe. It is true that in the past Shri Dangore had filed an application dated 23-7-1974 (Ex. 17/W) before the Bank stating that he wanted to have a change in his typing job and he wished to learn the other working of the Division, and that he was prepared to forego his typing allowance. However, again in 1982 he had filed an application dated 20-10-1982 (Ex. 18/M) that as he was performing typing work which was previously done by Shri Hedao, he be paid the necessary typing allowance on permanent basis and not on pro-mta basis. Since 1982, Shri Dangore, who was senior to Shri Sahasrabudhe,

was also working as a Typist and was entrusted with typing work and was drawing typing allowance. According to the management, Shri Dangore had attained the proficiency in typing and therefore the Bank management appointed Shri Dangore, the seniormost person in the Divisional office and also the employee having proficiency in typing as Telex Operator by the office order dated 20-4-1985 (Ex. 8/W) by withdrawing the work of Telex Operator from Shri Sahasrabudhe and that work was allotted to Shri Dangore. According to the Bank management, through mistake Shri Sahasrabudhe was firstly asked to work as a Telex Operator by Office Order dated 30-10-1984, and when it was transpired that in fact Shri Dangore was senior to Shri Sahasrabudhe, the post of Telex Operator was withdrawn from Shri Sahasrabudhe and allotted to Shri Dangore by rectifying its mistake, and this was done by Office Order dated 20-4-1985. It is true that Shri Sahasrabudhe had also done the work of Telex Operator in the past for some days. He had worked as a Telex Operator for 31 days on different occasions before he was allotted the work of Telex Operator by the Office Order dated 30-10-1984. However, Shri Dangore admittedly being senior to Shri Sahasrabudhe and had proficiency in typing, as per the above said Office Order, the Bank management allotted the work of Telex Operator to Shri Dangore. I find that this action taken by the Bank management is quite just and proper. Issue No. 1 is therefore answered in the negative.

## Issue Nos. 2 and 6

9. Even though Shri Dangore was allotted the work of Telex Operator by the Office Order dated 20-4-1985, within a short period i.e. by order dated 31-5-1985 (Ex. 16/W) the Bank management transferred Shri Dangore from the Divisional Manager's office to the office of the Assistant General Manager and directed him to work as Telex Operator in that new office. It is an admitted fact that the office of the Divisional Manager and the office of the Assistant General Manager and two more offices are situated in the same building. As Shri Dangore was transferred from the Divisional office to the office of the Asstt. General Manager, the next senior-most person was Shri Sahasrabudhe, and as such he was entitled to the post of Telex Operator in the Divisional Office. However, it is seen from the record and also the office order dated 31-5-1985 that the Telex Machine was shifted from the Divisional Office to the office of the Assistant General Manager. Therefore, even though Shri Sahasrabudhe was to be appointed as Telex Operator, there was no Telex Machine in the Divisional Office. In case Shri Sahasrabudhe was to be transferred to the Asstt. General Manager's office, Shri Dangore being senior to Shri Sahasrabudhe, Shri Dangore would be and was entitled to work as Telex Operator. It is seen from the record that the Union had made representation to the Bank management that the Telex Machine be retained in the Divisional Office. However, that request was not granted by the Bank management. It cannot be said that the Telex Machine was shifted from the Divisional Office to deprive Shri Sahasrabudhe of his claim to be a Telex Operator. It is seen that for some administrative purpose the Telex Machine was shifted from the Divisional Office to the Assistant General Manager's office. Therefore, even though Shri Sahasrabudhe was entitled to the post of Telex Operator in the Divisional Office, as the Telex Machine was then shifted from that office to the office of the Assistant General Manager, where Shri Dangore was already transferred, Shri Sahasrabudhe is not entitled to any relief. Issue No. 2 is found in the affirmative, while Issue No. 6 is found in the negative.

## Issue No. 7

10. In the result, the following order is passed.

## AWARD

The action of the Bank of Maharashtra in withdrawing the post of Telex Operator from Shri S. T. Sahasrabudhe and allotting the said post to Shri N. D. Dangore by the Office Order dated 20-4-1985 is not unjust and illegal. On transfer of Shri Dangore from the Divisional Office to the office of the Assistant General Manager, Shri Sahasrabudhe is not

entitled to any relief, as the Telex Machine was shifted from that office to the Assistant General Manager's Office.

The parties to bear their own costs of this Reference.

P. D. APSHANKAR, Presiding Officer  
[No. L-12012/301/85-D.II(A)]

का.प्र. 610.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के प्रसूचन में, केन्द्रीय सरकार सेन्ट्रल बैंक ऑफ इंडिया के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, प्रत्यक्ष में निश्चित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधि-करण, कानपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को प्राप्त हुआ था।

S.O. 610.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure in the industrial dispute between the employers in relation to the Central Bank of India and their workmen, which was received by the Central Government.

#### ANNEXURE

BEFORE SHRI ARJAN DEV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-  
CUM-LABOUR COURT, KANPUR

Industrial Dispute No. 22 of 1988

Reference No. L-12012/16/87-D.II (A) dated 2-3-88.

In the matter of dispute between :

General Secretary C. B. Employees Congress, C/o C.B.I.  
Nayaganj, Kanpur

Petitioner

#### AND

1. Chairman and M.D., Central Bank of India, Central  
Office, Chandramukhi, Nariman Point, Bombay

Opp. parties

2. Regional Manager, Central Bank of India, Regional  
Office, Pandu Nagar, Kanpur.

#### AWARD

1. The Central Government, Ministry of Labour, vide its Notification No. L-12012/16/87-D.II (A) dated 2-3-1988, has referred the following dispute for adjudication to this Tribunal for adjudication :

"Whether the action of the management of Central Bank of India in denying promotion to Shri Mahesh Chandra to the post of Sub-Accountant despite his selection in the test is justified? If not, to what relief is the workman entitled?"

2. The present case was fixed for 15-11-88 for filing affidavit evidence by the workman concerned. On the date fixed Shri Rakesh Tandon Authorised Representative for the management appeared but the workman despite information by registered post did not put in his appearance.

3. Thus it seems that the Union is not interested in prosecuting the case. As such a no claim award is given in the instant case.

ARJAN DEV, Presiding Officer  
[No. L-12012/16/87-D.II(A)]

का.प्र. 611.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के प्रसूचन में, केन्द्रीय सरकार लक्ष्मी कामर्सियल बैंक लि. (केनरा बैंक) के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, प्रत्यक्ष में निश्चित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को प्राप्त हुआ था।

S.O. 611.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure in the industrial dispute between the employers in relation to the Lakshmi Commercial Bank (Canara Bank) and their workmen, which was received by the Central Government.

#### ANNEXURE

BEFORE SHRI G. S. KALRA, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL  
NEW DELHI

1. D. No. 22/84

In the matter of dispute between :

Shri Brij Mohan Chadha, IX/6024, Ram Gali, Subhash  
Mohalla, Gandhi Nagar, Delhi-110031.

#### Versus

The Assistant General Manager (Personnel), Establishment  
Department, Lakshmi Commercial Bank, Shila  
Hotel Building, Ram Nagar, New Delhi-110055.

#### APPEARANCES :

Shri S. K. Bisaria with Shri D. K. Heera Advocate -  
for the workman.

Shri N. C. Sikri with Shri S. Ramji—for the Management.

#### AWARD

The Central Government in the Ministry of Labour vide its Notification No. L-12011/34/83-D.IV (A) dated the 24th February, 1984 has referred the following industrial dispute to this Tribunal for adjudication :

"Whether the action of the management of Lakshmi Commercial Bank Ltd., New Delhi in relation to their Chandni Chowk Branch, Delhi in terminating the services of Shri Brij Mohan Chadha, Pass-Book Writer with effect from 24-12-1980 is justified? If not, to what relief is the workman concerned entitled?"

2. The case of the workman is that he was appointed as a pass book/statement writer and posted in the Chandni Chowk Branch of the erstwhile Laxmi Commercial Bank (since amalgamated with the Canara Bank w.e.f. 24-8-1985) where he worked from 25-3-80 to 24-12-1980. The workman regularly performed the duties of regular clerk and was mainly doing typing preparation of drafts, ledger posting pass book, statement writing etc. and he performed duties from 10 A.M. to 5 P.M. His services were illegally and arbitrarily terminated on 24-12-1980 without any cause and by adopting unfair labour practices. Workman claimed that he had put in more than 240 days service in a calendar year and, therefore, had completed one year's continuous service as defined under section 25-B of the I. D. Act (hereinafter referred to as the Act). He was not given any notice, nor any wages in lieu of notice were paid nor any retrenchment compensation was paid and person junior to him namely Madan Mohan and Shiv Kumar were retained in service and thus there was violation of the provisions of section 25-F and G of the Act. Hence he has prayed for his reinstatement with continuity of service and with full back wages.

3. Earlier the written statement was filed on behalf of the erstwhile Laxmi Commercial Bank Ltd. and after its amalgamation Canara Bank adopted the submissions made by the Laxmi Commercial Bank in its written statement and took up additional pleas. A preliminary objection was taken that during the pendency of the present dispute the Laxmi Commercial Bank was amalgamated with the Canara Bank w.e.f. 24-8-1985 and as per the scheme of amalgamation which has statutory force, the liability of the Canara Bank is limited to only those employees who were in the service of the erstwhile Laxmi Commercial Bank on the specified date 24-8-85. As the workman was not in the service of the transferee Bank on the specified date there is no liability on the part of the Canara Bank to take him back into service. Some other usual preliminary objections like non-application

of mind on the part of the appropriate Government and the matter not having matured into an industrial dispute and Tribunal not having jurisdiction etc. were raised but their objections have no substance nor were they pressed at the time of arguments and hence these are not being mentioned in detail. On merits it was submitted that the workman was engaged as temporary part time pass book/statement writer for fixed duration w.e.f. 25-3-1980 on contractual basis and on the expiry of the said period his services automatically stood terminated with efflux of time. It was denied that the workman was asked to do the duties of regular employee or that he actually performed the duties of regular clerk or that he performed his duties from 10 A.M. to 5 P.M. It was submitted that the workman was engaged on part time basis and he was doing his duties for the period of only 2 hours a day. It was also denied that the workman had performed duties for 240 days in 12 calendar months. It has been submitted that the claimant was a part time employee and hence the provisions of section 25-B were not attracted. It was further stated that the appointment and classification of the duties of the workman were in accordance with the provisions of the Bipartite Settlement and there was no violation of any rule or law and the workman was not entitled to any relief. It was further stated that erstwhile Laxmi Commercial Bank Ltd. had entered into a settlement with its Employees Federation by way of collective bargaining for recruitment of clerical cadre and as per norms laid down in that settlement the minimum qualifications for appointment to the clerical cadre were second class with minimum 50% marks relaxable to 45% in case of Honours Graduate in Commerce/Economics/Math/English/Agriculture or post-graduate or double degree holders in Commerce/Economics/Math/Agriculture provided that the candidate did not fail more than once in any board examinations and further the candidate had to appear in a written test and after having passed the written test had to appear in a regular interview and it is only after he was declared successful in the interview his name was to appear in the panel. This settlement continued to be in force till the bank was amalgamated with the Canara Bank and, therefore, the workman was bound by the said settlement. As per his own admission the workman was not even a graduate and he was 3rd year B. Com pass student at the time of the cessation of his assignment.

4. I have given my careful consideration to the pleadings of the parties, the evidence brought on record and the arguments advanced on behalf of both the parties and I am of the opinion that the workman is not entitled to any relief for the reasons set out hereafter.

5. The claim of the workman is liable to be rejected on the short ground that he has not come to this Tribunal with clean hands. He has asserted that he was appointed and working as a Clerk on a regular basis and performing the duties from 10 to 5 P.M. but the documents on record and the admission made by the workman in his own statement in court as WW-1 clearly show that the workman has made a false claim in his regard. Ex. M-1 is the relieving letter dated 24-12-80 issued by the Management in which it was clearly mentioned that the workman had been engaged as a temporary part time pass book writer/statement writer on contractual basis for a period of 9 months which expired on 24-12-80 and, therefore, he was relieved from duties w.e.f. 24-12-1980. The most damaging document to the workman is the letter Ex. M-9 dated 14-6-1983 written by the workman himself of the Management in which he has clearly stated that he had been appointed as a part time pass book writer at branch office Chandni Chowk, Delhi and requested for regular absorption in the service of the Bank in clerical cadre. In his cross-examination as WW-1 the workman has admitted that he had submitted this representation dated 14-6-83. Therefore, he cannot get out of his own admission that he was working as a part time Pass Book writer. All his other assertions that he is doing regular work of a Clerk must be taken to be an after thought. Again in his cross-examination as WW-1 the workman has stated that he was a regular student of Sham Lal College. Earlier he stated that he was attending evening classes but when confronted with the suggestion that he was attending the morning classes the workman stated that he had obtained admission in the morning classes but was actually attending the evening classes and

that the morning classes used to be from 9 to 4 P.M. The workman tried to get out of the situation by stating that he obtained admission in the morning classes but actually he was attending the evening classes and the principal of the college had assured him that he will attend evening classes and his attendance will be adjusted against the morning classes as he was in service. The Management has placed on record extracts from the conditions for admissible to examinations according to which the student has to obtain migration from morning classes to evening classes and the workman had neither pleaded nor produced any evidence that he had obtained migration for attending the evening classes. Any arrangement he might have made with the principal as stated by him was against the rules and, therefore, no notice can be taken of the same. The admission that he was a regular student of the Sham Lal College of the morning classes negates the claim of the workman that he was performing whole time duties from 10 A.M. to 5 P.M. In the Bank and supports the contention of the Bank that he was performing the duties for 2 hours only from 3 to 5 P.M. The Management has also produced copies of the salary bills pertaining to the workman (Ex. M-6) in which it has been clearly mentioned that the salary was for pass book writer part time. Even the amount received by the workman regularly indicates that he was receiving part time wages and not full time wages. The workman has admittedly signed on these salary bills and he is therefore, estopped from claiming that he was working on full time basis.

6. The Management has also placed on record a copy of the settlement dated 15-3-80 Ex. M-1 between the Management of the erstwhile Laxmi Commercial Bank and its employees according to which the minimum qualifications for recruitment to the clerical cadre were Graduation Second Class with minimum 50% marks relaxable upto 45% in case of Honour Graduate or post graduate or double degree holders. The workman in his cross-examination as WW-1 admitted that he passed his graduation in May or June, 1981 in 3rd Division. He clearly admitted that he was not graduate when he joined service of the bank. He also admitted that he did not submit any written application for regularisation after the aforementioned settlement and he also did not make any such application or attend any such test and this apparently is because he was not qualified to do so and the Management was justified in not taking him into clerical cadre on regular basis.

7. Para 20.4 and 20.6 of the Bipartite Settlement dated 19-10-66 which is binding on the parties reads as under :—

"20.4 Notwithstanding anything contained in paragraph 498 of the Sastri Award or pass-book writing, all banks will be free to employ part-time clerks as pass books writers. Apart from such persons already in employment, in future only students and retired persons (but in any case no person already in employment elsewhere) will be engaged by banks for this purpose. Their hours of work will not exceed 12 hours in a week.

20.6 Subject to a banks' recruitment rules, if any, part-time employees will be given preference for filling of full time vacancies, other things being equal."

It is, therefore, apparent that the workman had been employed in accordance with the provisions of the Bipartite Settlement and he had only a right to be given preference for filling up full time vacancy, other things being equal, but here the workman did not fulfil the requisite minimum qualifications and, therefore, he had no essential right for absorption in the clerical cadre of the Bank.

8. Now the question arises as to whether the workman had completed 240 days of continuous service so as to said into the protection of section 25-F of the I. D. Act. As has been shown above, the workman was only performing part time duties of 2 hours per day and, therefore, he cannot be said to be in continuous service for one year because the minimum of the 240 days to meet the requirement of section 25-B envisage full time work and not part time. If at all, the part time work is to be taken into consideration, then 3 or

4 days part time work may possibly be equated with one full day and in that event the workman cannot be said to have completed continuous service for one year. Therefore, he had not sailed into the protection of section 25-F of the Act and no illegality has been committed by the Management in not serving him any notice or paying him any retrenchment compensation. The relevant provisions of the Bipartite Settlement also do not envisage the service of any notice to a part time employee.

9. Before parting with this case I may briefly deal with the preliminary objection of the Management in relation to the obligation of the Canara Bank which is the successor of the erstwhile Laxmi Commercial Bank. The Id. representative of the Management has referred to the provisions of para 10 of the scheme of amalgamation of the Laxmi Commercial Bank with the Canara Bank formulated under section 45(1) of the Banking Regulation Act, 1945 and published in the Gazette of India dated 23-8-1985 and has submitted that the Canara Bank has got no obligation towards Ex-employees and its liability is confined only to those employees who were in service as on specified date 24-8-85. However, para 2 of the scheme of amalgamation clearly provides "and as from the prescribed date, the liabilities duties and obligations of the transfer bank shall be and shall become the liabilities, duties and obligations of the transferee bank to the extent and in the manner provided hereinafter "and further" if on the prescribed date any suit appeal or other legal proceedings of whatever nature by or against the transferor bank is pending, the same shall not abate or be discontinued or be in any way prejudicially affected, but shall, subject to the other provisions of the scheme, be prosecuted and enforced by or against the transferee bank". Now section 2(s) of the I. D. Act defines the workman as under :

“(s) “Workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute includes any such person who has been dismissed discharged or retrenched in connection with, or as a consequence of that dispute, or whose dismissal, discharge or retrenchment had led to that dispute, but does not include any such person.....”

It is, therefore, apparent that workman (or employee) includes any such person who has been dismissed, discharged or retrenched. If the above definition of workman is read in conjunction with the scheme of amalgamation, there is no doubt left that in relation to an industrial dispute, as the present one, the liability of the Management extends to the ex-employees also who have been dismissed, discharged or retrenched.

10. In view of the discussion made above, the workman is not entitled to any relief and the reference is disposed of accordingly.

Dated : 30th June, 1988.

G. S. KALRA, Presiding Officer

Further it is ordered that the requisite number of copies of this Award may be forwarded to the Central Government for necessary action at their end.

Dated : 30th June, 1988.

G. S. KALRA, Presiding Officer  
[No. L-12012/34/83-D.IV (A)]

का.प्र. 612.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार हड़ियन बैंक के प्रबन्धन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में औद्योगिक अधिकरण, मद्रास के पंचपट को प्रकटित करती है, जो केन्द्रीय सरकार को प्राप्त हुआ था।

S.O. 612.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Madras as shown in the Annexure in the industrial dispute between the employers in relation to the Indian Bank and their workmen, which was received by the Central Government.

## ANNEXURE

### BEFORE THE INDUSTRIAL TRIBUNAL, TAMIL NADU, MADRAS

Friday, the 9th day of December, 1988

Industrial Dispute No. 5/86

(In the matter of the dispute for adjudication under Section 10(1)(d) of the Industrial Dispute Act 1947 between the workmen and the Management of Indian Bank, Madras-1)

### BETWEEN

The Workmen represented by

The Secretary General, The Federation of the India Bank Employees' Union, 25- Second Line Beach, Madras-600001.

### AND

The Deputy General Manager (PL) Indian Bank, Head Office, 31 Rajasalai, Madras-600001.

### REFERENCE :

Order No. L-12011/28/85-D.II (A), dated 9-1-1986 of the Ministry of Labour, Government of India, New Delhi.

This dispute coming on for final hearing on Wednesday the 28th day of September, 1988 upon perusing the reference, claim and counter statements and all other material papers on record and upon hearing the arguments of Thiru N.G.R. Prasad for Tvl. Raw and Reddy and V. Prakash Advocates appearing for the workmen and of Thiru G Venkataraman for Thiruvalluvar Aiyar and Dolia, Advocates for the Management and this dispute having stood over till this day for consideration, this Tribunal made the following :

### AWARD

This dispute between the workmen and the Management of Indian Bank, Madras arises out of a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 by the Government of India in its Order No. L-12011/23/85-D.II (A) dated 9-1-1986 of the Ministry of Labour for adjudication of the following issue :

“Whether the action of the Management of the Indian Bank, Madras in denying the postings of Special Assistants as per clause II(1)(5) Part I of the promotion policy settlement dated 21-5-1983 to Shri Gurdayal Singh and 19 others as per the list for the years 1982 and 1983 with effect from 19-4-1984 is justified ? If not, to what relief the workmen are entitled to ?”

2 The Petitioner-Union in its claim statement states that it entered into a settlement with the Respondent-Management on 21-5-1983 with regard to promotion policy and as per the Settlement, employees in the clerical cadre who do not accept promotion as Officers would be offered the post of Special Assistants and for that purpose the Bank was to make a provision for the maximum of 25 Special Assistants posts every year. Paragraph 7 Part IV of the Settlement reads as follows :

“The Management will communicate to the Federation of Indian Bank Employees' Union vacancies in the Officers cadre, for each calendar year as early as

possible not later 31st March of that calendar year. The Management should take all steps necessary to complete all promotions before 30th June every year. However for the year 1982-83 the Management will complete all promotions from Clerical Cadre to Officer Cadre by the end of October 1983."

The Settlement though was signed on 21-5-1983 and it was retrospective in operation, as far as the promotion for the years 1982 and 1983 were concerned. The Bank had declared a number of vacancies for the year 1982 as 400 and for the year 1983 as 300 and it also effected promotions to the Officers posts for the years 1982 and 1983 in the year 1983. Subsequently on 19-4-1984 when the Respondent-Bank wrote to the Petitioner-Union a list of clerks who were posted as Special Assistants containing only names of 25 clerks whereas as per the Settlement, the Bank has to offer for each year 25 posts of Special Assistants. The Bank ordered only 25 such posts instead of 50 Special Assistants. The Petitioner-Union represented the Bank about the improper implementation of the settlement. The Respondent-Bank refused to grant the demand. Hence the matter was taken by the Petitioner-Union to the Labour Authority and even there the Bank reiterated their stand and finally the failure report was sent to the Labour Authorities. The action of the Bank in refusing to create the post of Special Assistants for the year 1982 is unfair and contrary to the Settlement. The contention that the Settlement is prospective is wholly untenable because though the settlement was signed in 1983, promotions for the posts of Officers for 1982 have been effected only after the settlement in accordance with its terms. The Bank cannot say that as far as promotions as Officers are concerned, the settlement will be retrospective and as far as creation of the posts of Special Assistants are concerned, the settlement will be prospective. If the Bank really understood the terms of the Settlement as it now interprets, it ought to have told the said 20 employees that they had no right of option for the year 1982, so that they could have decided to accept promotion as Officers. Hence, an award may be passed holding the action of the Bank in denying the posts of Special Assistants for the year 1982 is unjustified.

3. The Respondent-Bank in its counter statement states that out of 20 persons referred in the reference, 12 persons only opted for the post of Special Assistant as per the provisions of Promotion Policy Settlement and they were ~~ap~~ not at all eligible to be offered promotion on 19-4-1984 and were not promoted as Officers on that date. Further they did not opt to be appointed as Special Assistants on that date. Hence the question of offering the post of Special Assistant to these persons with effect from 19-4-1984 will not arise. Those eight persons who were subsequently promoted on 30-4-1984 as Officers. The earlier Promotion Policy Settlement dated 16-12-1978 was duly terminated by the Bank on its expiry on 31-12-1981. Then negotiations were in progress to arrive at a mutually acceptable promotion policy settlement with the Petitioner-Union from 1982 onwards and it culminated in the signing of the Promotion Policy Settlement dated 21-5-1983. In the meanwhile, in the Officer's cadre for the 1982, 400 vacancies arose and the Petitioner-Union was also informed the same. Since the Petitioner-Union wanted that those vacancies should be filled up as per provisions of the new Promotion Policy, a clause was included in Part IV(7) of the Promotion Policy Settlement wherein specifically stated for the year 1982/83, the Management will complete all promotions from clerical cadre to Officers' cadre by the end of October, 1983. This clause would make it clear that what was envisaged only promotions from clerical to officers cadre and not regarding selection or posting of special assistants. The Settlement having been signed on 21-5-1983 would be operative only from the said date and in the absence of clause containing retrospective the clause relating to provision of 25 Special Assistants every year is prospective in operation. In terms of the promotion policy settlement, posting as Special Assistants is only to those persons who were offered the post of officers under the seniority cum selectivity basis and those who did not accept the promotion

and opted for the postings of Special Assistants. In terms of Clause IV(3) of the promotion policy settlement dated 21-5-1983 the relevant date to determine the seniority shall be 31st December of every year. Had it been the intention of the parties to have promotions for the year 1982 and 1983, separately, the seniority of eligible staff members as on 31-12-1981 should have been taken to fill up the vacancies identified for the year 1982 and the seniority of the staff members as on 31-12-1982 should have been taken to fill up the vacancies identified for the year 1983. As per terms of promotion policy settlement Clause 11(B)(5) the Bank is under obligation to make a provision for only 25 Special Assistants, and 25 eligible persons amongst the 44 persons were offered postings as Special Assistants on 19-4-1984. Out of 25 persons, six did not accept their offer and therefore in their place another six persons in the 'wait list' were offered postings as Special Assistants. In view of the above, the first 12 persons named in the annexure could not be offered the option for postings as Special Assistants in regard to the year 1983. Though the 1983 promotions did include the vacancies of earlier year, the promotion were effected actually only in the year 1983 and therefore a maximum of 25 Special Assistants alone could be offered postings. There is nothing illegal or arbitrary in the Bank not offering the postings of Special Assistants to all those who opted for it when absolutely the requisite numbers are already filled up. As per settlement dated 21-5-1983, 25 employees, whose names were found to be a senior most in the list of employees who had refused the offer of promotion as officers in the promotions effected on seniority-cum-selectivity in 1983 were posted as Special Assistants. Hence the claim may be rejected as unjustified.

4. The point for consideration is whether the action of the management of the Indian Bank Madras in denying the postings of Special Assistants as per Clause 11(B)(5) Part I of the promotion policy settlement dated 21-5-1983 to Shri Gurdial Singh and 9 others as per the list for the year 1982 and 1983 with effect from 19-4-1984 is justified? If not to what relief the workmen are entitled to.

5. On behalf of the workmen, Exs. W-1 to W-16 and on behalf of the Management, Exs. M-1 to M-6 were marked. No oral evidence was adduced on either side.

6. The issue in this case revolves round the postings of Special Assistants to one of Thiru Gurdial Singh and 19 others as per the list for the years 1982 and 83 as per Promotion Policy Settlement entered into between the Petitioner-Union and the Respondent-Bank. In this connection, the learned counsel for the Petitioner-Union has straight away drawn my attention to Ex. W-9 corresponding to Ex. M-6, the Promotion Policy Settlement entered into between the Petitioner-Union and the Respondent-Bank on 21-5-1983, Part I in Ex. M-6 relates to Direct Recruitment, Part II(A) refers to Promotion on Merit Basis and Part II(B)(5) relates to Special Assistants would say :

"Such of those employed who have been offered promotion under the Seniority-cum-selectivity category and do not accept the offer of promotion may opt for the post of Special Assistant. On receipt of such application, which should be made within 30 days from the date of offer of promotion, for the post of Special Assistants, the same will be filled up on the basis of seniority. The Bank would make a provision for a maximum of 25 Special Assistant posts every year for the aforesaid purpose."

It is seen from the above, a provision has been made for accommodating a maximum of 25 Special Assistant every year. It is on the basis of this specific provision, a contention has been raised by the Petitioner-Union that the Respondent-Management only created 25 posts for 1983 and they have not created 25 posts for the year 1982 which is gross violation of the Settlement arrived at. Incidentally, it is also their plea that if the Management filled up the posts of Special Assistant at the rate of 25 for every year, the Petitioner would have got their promotions from 19-4-1984. On the other hand, the contention of the Management is that it is a one time promotion and 25 posts of Special Assistants



only need be offered in unbecoming and against the very tenor of the Settlement. As against this contention, the learned counsel for the Petitioner-Union laid stress on Part-IV Clause 7 of Ex. M-6 which reads as follows :

"The Management will communicate to the Federation of Indian Bank Employees Union vacancies in the Officers cadre, for each calendar year as early as possible, but not later than 31st March of that calendar year. The Management should take all steps necessary to complete all promotions before 30th June every year. However, for the year 1982/1983 the Management will complete all promotions from Clerical Cadre to Officer Cadre by the end of October, 1983.

It is seen from that clause that for the year 1982/1983, the Management will complete all promotions from clerical cadre to officer cadre at the end of October, 1983. It is urged by the Petitioner-Union that consequent on the promotion to officer cadre, a post of Special Assistant would have to be created and given to persons who do not accept the officer cadre at the rate of 25 Special Assistants. In other words, the above clause (7) specifically provides for the year 1982-1983 the promotions should be completed at the end of October, 1983. When this provision refers to 1982 and 1983, the Respondent-Management ought to have made provision consequent on the promotion of officers cadre, 25 Special Assistant posts for 1982 and 25 posts for 1983. In short, by giving promotion to officer cadre for 1982-1983 the Management consequently has to provide 25 Special Assistant posts for each year 1982 and 1983, whereas they have provided for 1983 only resulting in the non-implementation of mutual settlement arrived at by the parties. The learned counsel for the Respondent-Management of course pointed out that the above clause (7) would not apply to the cadre of Special Assistant posts, but only for the promotions from clerical cadre to officer cadre. In this connection, the learned counsel for the Petitioner-Union argued that Clause II (B)(5) and Part IV Clause (7) should be read together and the harmonious construction of these two clauses would only show that the Respondent-Management should provide 25 Special Assistant posts for each year 1982 and 1983. The Petitioner-Union is relied on Exs. W-1 and W-2, the letters dated 1-9-1982 and 7-6-1983 respectively from the Respondent-Management to the Petitioner-Union intimating the total number of vacancies in Officers Cadre for the year 1982 and 1983. It is pointed out that these two documents would itself show that the Management wanted to fill up the vacancies for 1982 and 1983 in respect of Officers cadre which would consequently lead to creation of Special Assistant posts for these two years. But on the other hand, according to the learned counsel for the Respondent that if it were the intention of the parties at the time of entering into settlement under Ex. M-6 a clause could have been included providing retrospective effect in respect of creation of Special Assistant posts for the year 1982 also and in the absence of the same the Settlement could have only prospective effect. In this connection, a reference was made to Ex. W-10, a copy of letter dated 5-10-1983 written by the Secretary General of the Petitioner-Union to the Respondent-Bank regarding filling up of vacancies caused by a selection of Special Assistants by drawing the attention of the Respondent-Bank to Part I Section (ii) Clause 5 of the Promotion Policy Settlement, namely, Ex. M-6. In this document, Union has not chosen to raise this issue. This letter refers to only 25 Special Assistant posts and not 50. According to the learned counsel for the Respondent, the intention of the parties on the date of Ex. M-6 and also subsequently on the date of Ex. W-6 is that the provision of 25 Special Assistant posts is not for earlier year. This contention cannot be brushed aside having no force. That apart, Exs. W-11 to W-13 were also relied on. Ex. W-11 is the letter dated 11-10-1983 addressed to the Petitioner-Union by the Bank enclosing clerical seniority list as on 31-12-1982 who will be called for the test for promotion under Seniority-cum-selectivity basis. Ex. W-12 is also a letter dated 13-10-1983 by the Respondent-Bank to the Petitioner-Union enclosing a clerical seniority list as on 31-12-1982. Ex. W-13 is the letter dated 19-11-1983 by the Bank to all the Branches forwarding the revised seniority list (after carrying out the rectifications) of clerical staff who have written the examination for consideration of promotion under seniority-cum-selectivity basis on 6-11-1983 held at

various centres. On the basis of the documents, an argument was raised that if really provision for Special Assistant posts was contemplated between the parties even for 1982, the seniority list should have been as on 31-12-1981 and not 31-12-1982. It is significant to note that the Union has not raised its finger when the seniority list was sent to them for the purpose of filling up of posts from clerical to officer cadre. It is only subsequent to that one time promotion were made. It is Respondent-Bank under Exs. W-14 and W-15 in two batches. It cannot be disputed and admitted that Ex. M-6 came into effect only from 21-5-1983, the date of settlement. Clause II (B) 5 of Part I of Ex. M-6 though relates to provision of 25 Special Assistant posts every year which would mean only from the date of coming into force of this Settlement (i.e.) 1983 and not for any other period. In effect, Ex. M-6 is only prospective and not retrospective unless a clause contains in Ex. M-6 itself that it would take into effect from a particular year. In the absence of any such provision in Ex. M-6, it is futile to contend that every mentioned in Part-II (B) Clause 5 would refer to earlier year(s) also. Even admitting the contention that Clause II(B) 5 in Ex. M-6 should be read together with Clause 7 of Part IV it would not take as that in respect of Special Assistant posts it should have been created for 1982 also. It is significant to note that Clause 7 of Part IV relates to only promotions from clerical cadre to Officer cadre and not to the cadre of Special Assistant. When clause 7 of Part IV is very specific about the cadre to be filled up for the year 1982-83, one cannot understand how this clause can be tackled on to Clause II(B)(5) so as to contend that for 1982 also a provision should have been made by the Management for 25 Special Assistant posts. Clause (7) of Part IV when confers to a particular cadre it cannot be contended by reason of the filling up of the Officers cadre, consequently provision should have been made for the posts of Special Assistants for 1982 and 1983 also. By no stretch of imagination, when in the absence of any provision in particular, relating to earlier year the contention of the learned counsel for the Petitioner-Union can be accepted. Above all, Section 19(1) of the Industrial Disputes Act, 1947 provides a settlement shall come into operation on date as is agreed upon by the parties to the dispute, and if no date is agreed upon, on the date on which the memorandum of the settlement is signed by the parties to the dispute. Thus it is then the plea of the Petitioner-Union has no legs to stand.

7. Therefore, I hold the action of the Management of Indian Bank, Madras in denying postings of Special Assistants as per Clause II(B)(5) Part I of promotion policy settlement dated 21-5-1983 to Shri Gurdial Singh and 19 others as per the list for the years 1982 and 1983 with effect from 19-4-1984 is justified. Award is passed accordingly. There will be no order as to costs.

Dated, this 9th day of December, 1988.

Witnesses Examined :

For both sides—None.

Documents Marked

K. NATARAJAN, Presiding Officer  
[No. L-12011/28/85-D.II (A)]

For workmen :

- Ex. W-1/1-9-82—Management's letter to the Union about total projected officers vacancies for the year 1982 is 400 (copy)
- Ex. W-2/7-6-83—Vacancies to Officer Grade from Clerical cadre declared by the Management (copy)
- Ex. W-3/20-4-84—Letter from Union to Management for implementing the settlement dated 21-5-83.
- Ex. W-4/10-11-84—Petitioner-Union's letter to Regional Labour Commissioner (copy)
- Ex. W-5/30-11-84—Reply by Management to Ex. W-4 (copy)
- Ex. W-6/18-12-84—Union's reply to the Management's Circular (copy)

- Ex. W-7/4-3-85—Minute of conciliation (copy)  
 Ex. W-8/14-3-85—Conciliation Failure Report (copy)  
 Ex. W-9/21-5-83—Promotion Policy (copy)  
 Ex. W-10/5-10-83—Representation by the Secretary General to the Assistant General Manager (copy)  
 Ex. W-11/11-10-83—Letter by the Management enclosing seniority list addressed to the Secretary General Federation of Indian Bank Employees Union of Labour, Employment (copy)  
 Ex. W-12/13-10-83—Letter by the Management enclosing the clerical seniority list as on 31-12-82 (copy)  
 Ex. W-13/19-11-83—Letter from Management enclosing revised seniority list (copy)  
 Ex. W-14/26-12-83—Letter from Management enclosing revised seniority list (copy)  
 Ex. W-15/30-4-84—Letter from Management enclosing revised seniority list (copy)  
 Ex. W-16/30-4-84—Statement showing list of Special Assistants during the year 1983.

For Management :

- Ex. M-1/9-1-82—Letter from Petitioner to the Management regarding settlement on promotion policy (copy)  
 Ex. M-2/10-5-82—Letter from Management to Petitioner-Union regarding promotion policy (copy)  
 Ex. M-3/7-10-83—Circular issued to Union regarding Promotion Policy (copy)  
 Ex. M-4/24-4-85—Xerox copy of Minutes of discussion held between Management of the Indian Bank and the Federation of the Indian Bank Employees Union  
 Ex. M-5/29-7-86—Settlement in terms of Section 2(P) of the Act, 1947 between the Management of Indian Bank and the Federation of Indian Bank Employees Union (copy)  
 Ex. M-6/21-5-83—Promotion Policy Settlement-Bound (copy).

नई दिल्ली, 17 मार्च, 1989

का. भा. 613.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन ओवरसीज बैंक के प्रबन्धतंत्र के संबंध में नियोजकों और उनके कर्मचारियों के बीच, प्रमुख में निविष्ट औद्योगिक विवाद में धर्म न्यायालय, एरनाकुलम के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-3-89 को प्राप्त हुआ था।

New Delhi, the 17th March, 1989

S.O. 613.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Labour Court Ernakulam, as shown in the Annexure in the industrial dispute between the employers in relation to the Indian Overseas Bank and their workmen, which was received by the Central Government on the 7th March, 1989.

#### ANNEXURE

#### IN THE LABOUR COURT, ERNAKULAM

Tuesday, the 28th day of February, 1989

Industrial Dispute No. 63 of 1986 (C)

#### BETWEEN

The Indian Overseas Bank represented by the Manager,  
 Indian Overseas Bank, Ernakulam Branch, M. G.  
 Road, Ernakulam, Cochin-682001.

AND

Their workman Shri N. Nagendran, House No. 10/1012,  
 Dobby Street, Veli, Fort Cochin, Cochin-682001

#### REPRESENTATIONS :

Shri B. S. Krishnan,  
 Advocate, Ernakulam. ...For Management.  
 Shri K. S. Madhusoodanan,  
 Advocate, Cochin-I. ...For Workman.

#### AWARD

Dismissal of one N. Nagendran, who was an employee under the Management of Indian Overseas Bank in relation to its Branch at M. G. Road, Ernakulam, Cochin, is the issue referred for adjudication by the Government of India. The matter was referred first to the Industrial Tribunal, Madras for adjudication by the Government of India as per Order No. L-12012/67/86-D.I(A) dated 6-6-1986. Thereafter the case was transferred to this court by the Government of India as per Order No. L-12012/67/86-D.I(A) dated 4-8-1986. The dismissal of the workman was after a domestic enquiry. The validity of the domestic enquiry was upheld by me as per my order dated 14-2-1989. The findings were also confirmed by me. Necessary facts have been stated in that order which is extracted in full hereunder :—

#### "PRELIMINARY ORDER

The industrial dispute between the above parties was referred to the Industrial Tribunal, Madras for adjudication by Government of India as per Order No. L-12012/67/86-D.I(A) dated 6-6-1986. The issue referred is "Whether the action of the Management of Indian Overseas Bank in relation to its Branch at M. G. Road, Ernakulam, Cochin in dismissing from service Shri N. Nagendran with effect from 23-1-1982 is justified? If not, to what relief is the workman concerned entitled?" The case was numbered on the file of that Court as I.D. 41/86. Thereafter the workman filed a Writ Petition O.P. No. 4662/86 in the High Court of Kerala praying for the transfer of this industrial dispute from the Industrial Tribunal, Madras to the Labour Court, Ernakulam. Thereupon the Government of India in exercise of the powers conferred by Sub-sec. (1) of Section 33B and clause (C) of Sub-sec. (1) of Section 10 of the Industrial Disputes Act, 1947 withdrew the proceedings pending before the Industrial Tribunal, Madras and transferred the same to the Labour Court, Ernakulam with the direction that this Court shall proceed with the proceedings from the stage at which it is transferred and dispose of the same according to law, as per Order No. L-12012/67/86-D.I(A) dated 4-8-1986. After receiving the reference under transfer this Court has registered this case as I.D. 63/86(C) and proceeded with the proceedings from the stage at which it was transferred.

2. The workman Nagendran was working as Messenger in the Management Bank. While so he was discharged from service with effect from 23-1-1982 for certain proved misconducts on the allegations that :

- (i) On 25-11-1980 he was tendered a collection cheque bearing No. 801101 for Rs. 2,488.50 issued by Kerala State Financial Enterprises received from the Mylapore branch as collection item (their ODB No. 2072). Though the cheque was presented at the District Treasury on 25-11-80 and the cash has been collected by him the same day he had not remitted the collection proceeds to the branch till 23-12-80 and thus misappropriated the same for a period of one month.
- (ii) In view of the above fraud he had also absented from duty from 25-11-80 without any intimation to the branch and his whereabouts were not known till 23-12-80 the day on which he deposited the misappropriated amount to the branch. Subsequently he reported for duty only on 24-12-80.
- (iii) On 11-9-80 he had taken a sum of Rs. 216 from the branch towards purchase of postal stamps and



did not report to office till 14-9-80. He has accounted for the amount only on 14-9-80 and was not above to satisfactorily explain the cause of his action.

- (iv) His leave record was highly irregular vide AGM(R) letter dated 23-11-78, 22-2-79 and 24-5-79 on several occasions and punished after enquiry vide Disciplinary Authority's letter dated 20-2-80 and advised to show improvement in his leave record he had failed to improve his attendance and attitude towards work and continued to absent frequently without any intimation to the branch and without having any leave to his credit and on insufficient grounds.

The memo of charge was served on the workman who has submitted his explanation to the charges. Dis-satisfied with the explanation submitted by the workman the Management ordered a domestic enquiry and the Disciplinary Authority conducted an enquiry. In the enquiry it was found by the Enquiry Officer that the workman is guilty of all charges. Accepting the findings of the Enquiry Officer, the workman was discharged from service. (Even though in the order of reference the issue is "dismissal from service" both the Management and the workman in their respective statements admitted that the workman was not dismissed but only discharged from service). The workman is challenging the report of the enquiry officer and his findings.

3. The workman has filed a claim statement contending as follows :—

While he was working as Messenger in the Management Bank he was discharged from service with effect from 23-1-1982. He was charge-sheeted for the misconducts raising four allegations. An enquiry was conducted by the Disciplinary Authority Shri C. M. Premkumar by nakedly violating the course of natural justice. In the enquiry report it was found that all the charges are proved. Even though the worker was allowed to be represented by a Union representative very important documents relied upon by the Management were not supplied to the workman. The enquiry officer has not properly appraised the defence case. He was biased and showed little value to the actual facts put forward by the defence. The Management failed to examine material witnesses. The workman admitted that he had encashed the cheque for the amount of Rs. 2488-50. His explanation was that 8 other cheques having small amounts were also entrusted with him and he collected the amount of Rs. 1,279.25 for the same. For the big amount, the treasury gave a token and insisted him to come in the afternoon. He returned and entrusted the employer the sum of Rs. 1,279.25 and again went to the Treasury. He collected the amount of Rs. 2,488.50, but unfortunately the amount was found missing on his return to the Bank. Due to the mental shock he did not go to the Bank, but came to home and thereafter he was admitted at St. John's Hospital, Vyttila, Ernakulam and hence he could not inform the Bank duly and furnish the leave application. Bank cannot be allowed to penalise the worker for their own violation of the settlement. The Enquiry Officer showed only scant respect to the defence plea. There is not even a whisper of the hospitalisation and the certificate from St. John's Hospital Vyttila. After his discharge from the hospital he made the payment to the Bank and the so-called temporary misappropriation was beyond the control of the worker and it was the Management who violated the terms of settlement by entrusting to collect a huge amount. The bank should have avoided the enquiry and the consequential discharge of the worker. Regarding the stamp issue the worker had stated that he had purchased postal stamp worth Rs. 216. But at the Post Office, one of the neighbours told him that his aunt's child was demised. He immediately went to his home. But his mother was not found in the home and hence without informing her he rushed to Trichur. He could be relieved from there only on 15-9-1980 as he was engaged in the death ceremonies. The enquiry officer brushed aside the version mainly on the reason that immediately after 11-9-1980 they enquired the whereabouts of the worker at his house, but got nothing. But the enquiry officer purposefully shut his eyes on the naked fact that he rushed to Trichur without informing his mother. The Enquiry Officer should have appraised

the situation that it was only a belated charge, that the workman had not misappropriated any money, that he had forthwith purchased the stamp, that it was all along with him, that the worker could do nothing with the postal stamp and that if he had any dishonest intention, he could have misappropriated the money itself. On the charge of leave anomalies, all these occasions the worker had applied for leave and often with medical certificates. The delay, if any, caused was due to the control beyond his capacity and he cannot be penalised to such an extreme level. It can be seen that not only the enquiry was improper and a naked violation of natural justice, but also there is no prima facie evidence to cope with guilt. The back record of the worker is not tainted with misconducts. If at all it is assumed that the misconduct is proved for argument sake, the punishment of discharge is harsh and disproportionate and the worker is entitled to reinstatement with back wages or such other consequential reliefs.

4. It is pertinent to note that the claim statement was signed not by the workman but by his counsel. So no claim statement is filed by the workman in this case.

5. The Management has filed a counter statement contending as follows :—

The enquiry was conducted by the Disciplinary Authority adhering to all the principles of natural justice and in accordance with the procedure laid down in the settlement reached between the Union representative of the workman and the Bank Management. The worker fully participated in the enquiry and availed of the opportunities. He has cross-examined the witness of the Management as well as adduced his own evidence. The Disciplinary Authority after careful consideration of the evidence on record came to a bona fide conclusion of guilt against the workman. The Disciplinary Authority after considering the evidence on record was satisfied that the guilt is established against the workman and he was discharged from service. His appeal to the Appellate Authority was also dismissed. At no point of time the worker has objected to the proceedings in the enquiry or raised any objection with regard to the conduct of the enquiry and therefore he cannot be now heard to submit the various allegations against the enquiry officer and the conduct of the enquiry. The misappropriation is also admitted even in the claim statement. Again in the claim statement itself the counsel has admitted the misappropriation of the amount entrusted to the worker for the purchase of the stamp. Whatever be the explanation the admission still remains. The story advanced by way of explanation is an after-thought. It is to be noted that the worker was sent for collection of the cheque. He never protested against that. Only when the Management found out about the misappropriation he has come forward with a statement that the amount was huge and that is why it was missing. No medical certificate was ever received by the Management at any time and the same is only an after-thought. The Bank is a public institution and it is handling public money and even an attempt of misappropriation cannot be tolerated.

6. The worker has filed a rejoinder reiterating the claims in the claim statement and refuting the contentions in the counter statement of the Management.

7. The question to be considered is whether the enquiry conducted by the Management is proper and legal and the findings of the enquiry officer are supported by legal evidence and material facts.

8. For the Management MW1 was examined and Ext. M1 marked.

9. The workman would allege that the domestic enquiry and its report are vitiated for the reasons that the enquiry officer has acted as judge and prosecutor and no list of witnesses was supplied to him before the examination of witnesses and the copies of the documents which were relied on by the enquiry officer were not furnished to the workman and the evidence had been collected by the enquiry officer behind the back of the workman and the principles of natural justice

were not observed. In support of his contention the workman has relied on some decisions of the Karnataka High Court. So also the counsel for the workman has relied on the decision in A.I.R. 1970 SC 1255 and 1983 II LLJ 371.

10. The learned counsel for the Management would argue that the following procedures have been complied with by the Management with regard to the disciplinary action taken against the workman. They are :

- (i) Issued charge-sheet setting forth the allegations and called for explanation.
- (ii) Sent the enquiry notice in advance, informing the place, time and date of enquiry.
- (iii) Read over the charges and permission was granted to be defended in the enquiry by the Asstt. General Secretary of All India Overseas Bank Employees Union. The representative has cross-examined the defence witnesses.
- (iv) The worker's representative was allowed to scrutinise the documents proposed to be relied on by the management and informed the evidence that the management wished to be relied on before the enquiry.
- (v) The copy of the enquiry proceedings were furnished to the worker and opportunity was given to file summing up statement and the worker has accordingly submitted summing up statement also.
- (vi) Forwarded the copy of the findings arrived at on the basis of the evidence on record, to the worker and to show cause as to why the proposed punishment should not be imposed on him. He has not availed of the opportunity. Thereafter the punishment was inflicted.

The learned counsel for the Management would rely on the decision reported in 1987 K.L.J. 1211 in support of his argument that "an employee against whom disciplinary action is proposed or likely to be taken shall be given a charge-sheet clearly setting forth the circumstances appearing against him and a date shall be fixed for enquiry, sufficient time being given to him to enable him to prepare and give the explanation as also any evidence that he may wish or tender in his defence. He shall be permitted to appear before the officer conducting the enquiry to cross-examine any witness on whose evidence the charge rests and to examine witnesses and produce other evidence in his defence. He shall also be permitted to be defended by a representative of a registered trade union of bank employees or with the Bank's permission, by a lawyer. He shall also be given a hearing as regards the nature of the proposed punishment in case any charge is established against him". The learned counsel for the Management was also relying on the settlements dated 19-10-1966 and 31-10-1979 entered into between the Indian Banks Association and the All India Bank Employees Association. In Clause 3(ii) of the settlement dated 31-10-79 it has been stated that Clause 19.14 of the settlement between IBA and AIBEA dated 19-10-66, para 521(12) of the Sastri Award and para 18.28 of the Desai Award, clause 17.14 of the settlement between IOB and AIOBEU dated 14-12-66, clause 19.14 of the settlement between the BOB and AIOBEF dated 13-12-66 have been modified as under :

The Chief Executive Officer or the Principal Officer in India of a Bank, or alternate officer at the Head Office or Principal Office nominated by him for the purpose shall decide which officer (i.e. Disciplinary Authority) shall be empowered to take disciplinary action in the case of each office or establishment. He shall also decide which officer or body higher in status than the officer authorised to take disciplinary action shall act as Appellate Authority to deal with or hear and dispose of any appeal against orders passed in disciplinary matters. These authorities shall be nominated by designation to pass original orders or hear and dispose of appeals from time to time and a notice specifying the authorities so nominated shall be published from time to time on the Bank's notice board. It is clarified that the disciplinary authority may conduct the enquiry himself or appoint another officer as the enquiry officer for the purpose of conducting the enquiry. He would further argue that on a perusal of the

service conditions of the Bank employees the following points can be deduced :—

- (i) Intimation of the decision to take disciplinary action to be given.
- (ii) Charge-sheet setting forth the circumstances appearing against him to be given.
- (iii) Enquiry in detail should be conducted.
- (iv) Opportunity to cross-examine the Management's witnesses and produce evidence in defence to be given.
- (v) Permission to be defended by a representative of a registered union to be given.
- (vi) Hearing as to punishment to be offered.
- (vii) The disciplinary action shall be taken by a designated authority. He has to frame charges and inflict the punishment for the proved charges.
- (viii) The disciplinary authority can conduct the enquiry by himself.

11. Then the main question to be considered is whether the enquiry can be said to be vitiated on account of the fact that it was conducted by the Disciplinary Authority who framed charges against the workman. It is an admitted fact that the enquiry officer was the disciplinary authority and there was no presenting officer for the Management also. It can also be seen that the enquiry officer has examined the witnesses of the Management in chief and the enquiry officer has also cross-examined the witness of the workman. The learned counsel for the workman would argue that it is a normal rule that a person prosecuting the case as a management representative, especially when he is in the pay roll of the management Bank, will be biased against the delinquent. The learned counsel for the workman would further argue that the manner in which the enquiry authority conducted the enquiry by cross-examining defence witness and putting leading questions to prosecution witness does establish that the enquiry authority was biased as he acted both as Prosecutor and Judge in recording evidence. The learned counsel for the workman has relied on the decision reported in 1987 (9) reports (Kar.) 757, 1987 I.L.R. (Kar.) 366 and 1977 (2) Karnataka Law Journal 225 in support of his argument. But the learned counsel for the Management would argue that the disciplinary authority may conduct the enquiry himself or appoint another officer as enquiry officer for the purpose of conducting the enquiry. He would further argue that the absence of presenting officer will not vitiate the enquiry in any manner. He argues relying on the decision reported in 1970 I.L.J. 26 (SC) that the Company was not represented by an Officer separately for presenting their case, that the senior Labour Officer who put questions to the witnesses and elicited answers from them and thereafter allowed them to be cross-examined by the workman, took statements from the worker and asked questions for clarification from him, won't warrant the criticism that the senior Labour Officer acted both as the Prosecutor and the Judge when he recorded evidence in the case. The Managers can conduct the enquiry and such enquiries are valid. The enquiry officer in this case has elicited facts from the Management's witnesses without asking any leading questions and the worker was questioned only for clarification of certain points which any decision making authority will normally do. He would further argue relying on the decision reported in 1983 I.L.J. 1 (SC) that a domestic enquiry officer is a managerial function and the enquiry officer is more often a man of the establishment ordinarily he combines the role of Presenting-cum-Prosecuting Officer and an enquiry officer, a Judge and Prosecutor rolled into one. The learned counsel for the Management would further argue relying on the decision in Francis v. Bank of Cochin Ltd., (1987 2-KLT 720) that the mere fact that the domestic enquiry was entrusted to the Law Officer of the Bank and the Management had its Personnel Officer as presenting officer will not vitiate the enquiry. A domestic enquiry is a managerial function and the enquiring officer is more often a man of the establishment. If the enquiry had been fair and the delinquent employee had reasonable opportunities for access to the records, to cross-examine witnesses and to defend himself,

it cannot be said that the enquiry is vitiated for the reason that it was held by an officer of the establishment. In the absence of rules it is in the discretion of the Enquiry Officer to permit legal representation at a domestic enquiry unless the delinquent officer is pitted against a legally trained person engaged by the management as Presenting Officer. The decision reported in 1970 1 L.L.J 26 (SC) would go to show that the Company was not represented by an officer separately for presenting their case, that the senior Labour Officer who put questions to the witnesses and elicited answers from them and thereafter allowed them to be cross-examined by the workman, took statements from the worker and asked questions for clarification from him, won't warrant the criticism that the senior labour officer acted both as Prosecutor and Judge when he recorded evidence in the case. In view of the principles enunciated in this decision and in view of the fact a domestic enquiry is a managerial function and the enquiring officer is more often a man of the establishment and if the enquiry had been fair and the delinquent employee had reasonable opportunities for access to the records, to cross-examine witnesses and to defend himself. It cannot be said that the enquiry is vitiated for the reason that it was held by an officer of the establishment as enquiring officer and presenting officer. Therefore the contention of the workman that the enquiry was vitiated on the ground that the disciplinary authority was the enquiry officer and presenting officer will not hold good.

12. Yet another contention raised by the workman challenging the validity of the enquiry is that the list of witnesses was not supplied to him. As he was not served with the list of witnesses sufficiently early, he could not examine the witnesses of the Management effectively after preparing his defence and so it cannot be safely concluded that sufficient opportunity was given to the worker to defend him. So also the copies of all documents were not furnished to the workman before those documents were got marked. So the learned counsel for the workman would argue relying on the decision reported in A.I.R. 1970 SC 1255 that the material collected behind the back of the workman cannot be used against the workman and the collection of materials behind the back of the workman will vitiate the enquiry. The learned counsel for the workman would further argue relying on the decision reported in 1963 1 L.J 392 that a workman who is to answer a charge must not only know the accusation, but also the testimony by which the accusation is supported. The learned counsel for the Management would argue that before the commencement of the enquiry the workman's representative wanted to scrutinise the documents and know the evidence that the management proposed to be relied on in the enquiry. It was only after allowing this prayer that he had agreed to proceed with the enquiry. The Management witnesses were the Branch Manager and the Accountant of the Branch in which the worker had been working. Their statements were recorded in the presence of the worker and his representative. He has effectively cross-examined the witnesses of the management and adduced defence evidence. If there was any difficulty or if he wanted more time to prepare his defence, he could have sought for it. The learned counsel for the Management would further argue relying on the decision reported in 1984 1 L.L.J 2 (SC) that those who complain of violation of principles of natural justice shall establish that they have been prejudiced in any manner due to the alleged non-compliance. Here the worker has not brought out as to how he has been prejudiced in any manner regarding the conduct of the enquiry. It is pertinent to note that the workman was given ample opportunity to peruse all documents relied on by the enquiry officer before the commencement of the enquiry and the worker's representative has scrutinised the documents and he would understand what were the documents which were going to be relied on by the enquiry officer in the enquiry. It is also pertinent to note that the Management has examined two witnesses who are none other than the Branch Manager and Accountant of the Branch in which the worker had been working. It can be seen from the evidence in Ext. M1 that the representative of the worker had cross-examined the witnesses in detail. Therefore in view of the fact that the worker's representative had given sufficient opportunity to scrutinise the documents which were relied on by the enquiry officer in the enquiry and the witnesses who were examined by the Management were the Branch Manager and the Accountant of the Branch who were cross-examined

by the representative of the workman in detail and the workman has effectively and earnestly participated in the enquiry and the entire evidence was adduced in his presence and he had been offered opportunity to meet them and he has also availed of the opportunity to cross-examine the witnesses of the Management and in the absence of the evidence that the workman has been prejudiced in any manner due to the alleged non-compliance of furnishing the list of documents and list of witnesses, it cannot be held that the enquiry was vitiated for want of furnishing witness list and list of documents relied on by the Management in the enquiry. It is also pertinent to note that these objections have not been raised by the workman at the time of enquiry and he has also not filed any claim statement even though he has filed only a rejoinder raising these contentions. In these circumstances, in view of the fact that the workman was heard giving him ample opportunity to adduce evidence and to challenge the evidence of the management and the workman has participated in the enquiry effectively and earnestly and the enquiry officer has followed the principles of natural justice without creating any prejudice to the workman, I find that the enquiry is legal and valid.

13. Concerning the findings of the enquiry officer on charges the worker had admitted that he had encashed the cheque for Rs. 2488.50. But he could not remit the amount in the Bank on account of missing of this amount. He would further admit that 8 other cheques having small amounts were also entrusted with him and he collected the amount of Rs. 1,279.25 for the same and he remitted the same in the employer Bank. But for the amount of Rs. 2488.50 the Treasury gave him a token and insisted him to come in the afternoon. He went to the Bank in the afternoon for collecting the amount of Rs. 2488.50 and he collected the same. But unfortunately the amount was found missing on his return to the Bank and due to the mental shock he did not go to the Bank, but came to home and thereafter he was admitted in St. John's Hospital, Vyttila, Ernakulam. Hence he could not inform the Bank duly and furnish the leave application. It can be seen that even though he has contended that he was admitted in the hospital, no medical certificate was produced in this case. So also it appears to be unconvincing and unbelievable that he was admitted in the hospital due to the mental shock when the amount of Rs. 2,488.50 was lost from him. In view of the fact that the encashment of Rs. 2,488.50 was admitted by the workman and it was also admitted by the workman that it was not remitted to Bank and explanation offered by the workman for not remitting the amount to the Bank appears to be incredible and unconvincing. It has to be held that the charge of misappropriation of the amount of Rs. 2,488.50 found to be proved by the enquiry officer is sustainable. It can also be seen that the enquiry officer has entered a finding that all the four charges levelled against the workman are proved-relying on the legal and acceptable evidence in this case. It can also be seen that the enquiry officer has appreciated and evaluated the evidence adduced in the enquiry properly and legally. The finding of the enquiry officer cannot be considered to be perverse or without legal evidence. Hence I find that the findings of the enquiry officer are based on legal evidence and therefore I hold that the findings are valid.

14. In the result I hereby order that there was a proper and valid domestic enquiry and that the findings of the Enquiry Officer are correct."

II. The next question to be considered is what is the proper and reasonable punishment which can be imposed on the delinquent workman. The charges levelled against the workman are misappropriation, breach of trust and irregular leave record of the workman. It is found in the preliminary order that the enquiry conducted by the Enquiry Officer is legal and proper and the findings of the Enquiry Officer are also sustainable. It cannot be held that the punishment imposed on the workman is disproportionate to the gravity of the offence committed by the workman. The learned counsel for the Management would argue relying on the decision reported in 1981 LAB. I.C. NOC 164 (KER) (T. K. Joseph v. Appellate Tribunal) that "Any leniency in proved cases of misappropriation of the revenue of public sector enterprises would only encourage the commission of such offences which in the long run would have disastrous consequences and would impair the image of such concerns in the public eye. Smallness of the amount involved by itself is no justification to ignore

the commission of the offence. May be that many daring cases of malpractices and misappropriation go un-noticed or at least without being punished. That does not, however, mean that the stamp of approval of the Court should be affixed to such illegal practices in proved cases reaching the Court." In view of this decision and in view of the fact that the workman has committed the misappropriation and breach of trust the punishment imposed on him is not excessive and disproportionate.

III. As stated earlier both parties admitted that the punishment imposed on the workman by the Management is discharge from service and not dismissal. In the result an award is passed confirming the punishment imposed on Shri N. Nagendran by the Management, viz., "Discharge from service with effect from 23-1-1982."

Ernakulam,

28-2-1989.

#### APPENDIX

Witness examined on the Management's side :

MW1 Shri C. M. Premkumar.

Exhibit marked on the Management's side :

Ext. M1.—The file relating to the domestic enquiry held against Shri N. Nagendran.

R. RAVEENDRAN, Presiding Officer  
[No. L-12012/67/86-D.II(A)]

नई दिल्ली, 21 मार्च, 1989

का. प्रा. 614.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार 'केनरा बैंक के प्रबन्धन के संघटन नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निविदा औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नं. 2, बम्बई, के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-3-89 को प्राप्त हुआ था।

New Delhi, the 21st March, 1989

S.O. 614.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 2, Bombay as shown in the Annexure in the industrial dispute between the employers in relation to the Canara Bank and their workmen which was received by the Central Government on the 7-3-1989.

#### ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2 BOMBAY

Reference No. CGIT-2/4 of 1988

PARTIES :

Employer in Relation to the Management of Canara Bank.

AND

Their Workman.

APPEARANCES :

For the Employer : Shri R. S. Pal, Advocate.  
For the Workman : Shri B. W. Vaidya, Advocate.

INDUSTRY : Banking.  
STATE : Maharashtra.

Bombay, dated the 27th February, 1989

#### AWARD

The Central Government by their Order No. L-12012/249/87-D, II(A), dated 29-1-1988 have referred the following

industrial dispute for adjudication to this Tribunal under Section 10(1)(d) of the Industrial Disputes Act :—

"Whether the action of the Dy. General Manager, Canara Bank Bombay in terminating the services of Shri Sidhram S. Gybyadkar, Daily Wager/Peon w.e.f. 30-6-1985 is justified? If not, to what relief the workman is entitled?"

2. The case of the workman Shri S. S. Gybyadkar as disclosed from his statement of claim, Ex-2) in short, is thus :—

He was appointed as a Peon on 15-11-1978 at the Saraswati Branch, of Canara Bank. Even though he was appointed at Saraswati Branch he was also required to work at the Chhatgalli Branch whenever required. On 30-6-1985 he was orally informed by the Bank management that his services were discontinued. This order of termination which amounts to retrenchment, is illegal and in violation of the provisions of the Industrial Disputes Act. He had then put in about eight years of service in that Bank. The Bank had not given any notice before terminating the services, nor was he given any compensation nor any wages in lieu of notice. The Bank had indulged in unfair labour practice in not continuing his services, nor was he given any compensation nor prayed that he be reinstated in the Bank service with full back wages and continuity of service

3. The Canara Bank by its written statement (Ex. 3) opposed the workman's claim, denied all the allegations made by him and in substance contended thus :—

The said worker was appointed as a Daily Wages from 15-11-1978. As he was not sponsored by the Employment Exchange, he could not be continued as a daily wages, and his services were dispensed with from 1-8-1985. A settlement had taken place on or about 11-9-1984 between the Bank and its recognised Union. Under that settlement it was agreed that the candidates who were engaged between 1-10-1978 to 31-12-1983 and who were not sponsored by the Employment Exchange, can be empanelled as daily wagers, provided such of the daily wagers have worked for not less than 240 days during 12 months during the relevant period. As the said workman did not comply with the said requirements, he was not entitled to be absorbed as daily wages and hence the Bank discussed with his service with effect from 1-8-1985.

4. On these pleadings, the necessary Issues were framed at Ex. 4.

5. While the case was at the stage of hearing, both the parties entered into an amicable settlement and filed the Memo. of settlement (Ex. 5). This Memo. has been signed by the workman himself, as well as by the authorised person on behalf of the Bank, and by the Advocates for the workman and for the Bank. The terms of settlement are thus :—

- "1. The first party bank shall re-empanel the II Party workman Shri S. S. Gybyadkar as a daily wages in the panel of daily wagers of the Solapur District. He will be engaged on daily wages as and when there is a leave vacancy as per his seniority.
2. The First Party bank shall empanel Sri S. S. Gybyadkar as daily wages and restore to him the original seniority in the panel of daily wagers as on 15-11-1978.
3. The First Party Bank undertakes to absorb the Second Party workman Sri S. S. Gybyadkar as a permanent sub-staff, as and when vacancy arises as per the seniority as restored to him in terms of the Settlement, in accordance with the policy of the Bank for such absorption.
4. The second Party workman undertakes and fully agrees to forgo all claims against the Bank including back wages from the date of dispensation of his

services to the date of empanelment as a daily wage in the bank.

5. The Second Party workman agrees to abide by the terms and conditions of the Settlement."

I find that this settlement is quite in the interests of both the parties. Hence Award must be, and is drawn in terms of that settlement.

P. D. APSHANKAR, Presiding Officer

[No. L-12012/249/87-D. II (A)]

N. K. VERMA, Desk Officer.

नई दिल्ली, 20 फरवरी, 1989

का. प्रा. 615:—केन्द्रीय सरकार ने यह समाधान हो जाने पर कि नाकहत में ऐसा करना अपेक्षित था, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खंड (ब) के उपखंड (6) के उपबंधों के अनुसरण में भारत सरकार के श्रम मंत्रालय की अधिसूचना संख्या का.प्रा. 2791 तारीख 30 अगस्त, 1988 द्वारा फासफेट खनन उद्योग को उक्त अधिनियम के प्रयोजनों के लिए 30 अगस्त, 1988 से छः मास का कालावधि के लिए लोक उपयोगी सेवा घोषित किया था।

और केन्द्रीय सरकार की राय है कि लोकहित में उक्त कालावधि को छः मास की ओर कालावधि के लिए बढ़ाया जाना अपेक्षित है।

अब अब, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खंड (ब) के उपखंड (6) के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार उक्त उद्योग को उक्त अधिनियम के प्रयोजनों के लिए 1 मार्च, 1989 से छः मास की ओर कालावधि के लिए लोक उपयोगी सेवा घोषित करती है।

[का.सं. 11017/4/85-ई-1 (ए)]

नन्द लाल, भवर सचिव

New Delhi, the 20th February, 1989

S.O. 615.—Whereas the Central Government having been satisfied that the public interest so required had, in pursuance of the provision of sub-clause (vi) of clause (n) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947), declared by the notification of the Government of India in the Ministry of Labour S.O. No. 2791 dated the 30th August, 1988 the Phosphate Mining Industry to be a public utility service for the purposes of the said Act, for a period of six month, from the 30th August, 1988;

And whereas, the Central Government is of opinion that public interest requires the extension of the said period by a further period of six months;

Now, therefore, in exercise of the powers conferred by the proviso to sub-clause (vi) of clause (n) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby declares the said industry to be a public utility service for the purpose of the said Act, for a further period of six months from the 1st March, 1989.

[No. S-11017/4/85-D.I (A)]

NAND LAL, Under Secy.

नई दिल्ली, 21 फरवरी, 1989

616:—उत्प्रवास अधिनियम, 1983 (1983 का 21) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार श्री राम कानुगा, भवर सचिव को उत्प्रवास संरक्षी-1 सम्बन्धी के रूप में दिनांक 16 फरवरी 1989 से भ्रमणा आदेश जारी होने तक, नियुक्त करती है।

[सं. ए-22012 (1)/89-उत्प्र.]

New Delhi, the 21st February, 1989

S.O. 616.—In exercise of the powers conferred by section 3 (i) of the Emigrants Act, 1983 (31 of 1983), the Central Government hereby appoints Shri Ram Kanuga, Under Secretary, Ministry of Labour as Protector of Emigrants, L. Bombay with effect from 16th February 1989 till further order.

[No. A-22012(1)/89-Emig.]

का.प्रा. 617:—उत्प्रवास अधिनियम, 1983 (1983 का 31) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार श्री एम्.घार. खत्री, भनुभाग अधिकारी को दिनांक 27 फरवरी 1989 से भ्रमणा आदेश जारी होने तक उत्प्रवास संरक्षी-सम्बन्धी के रूप में नियुक्त करती है।

[सं. ए-22012 (1)/89-उत्प्र.]

एस.सी. शर्मा, भवर सचिव

S.O. 617.—In exercise of the powers conferred by section 3, Sub-Section (1) of the Emigration Act, 1983 (31 of 1983), the Central Government hereby appoints Shri S. R. Khatri, Section Officer as protector of Emigrants, Bombay-II with effect from 27th February, 1989, till further orders.

[No. A-22012(1)/89-Emig.]

S. C. SHARMA, Under Secy.

नई दिल्ली, 6 मार्च, 1989

का.प्रा. 618:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार तेल और प्राकृतिक गैस आयोग, तेल भवन, देहरादून के प्रबंधन से सम्बन्धित और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचपट को प्रवाहित करती है, जो केन्द्रीय सरकार को 28-7-89 को प्राप्त हुआ था।

New Delhi, the 6th March, 1989

S.O. 618.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of ONGC, Tel Bhawan, Dehradun and their workmen, which was received by the Central Government on the 28-7-1989.

#### ANNEXURE

BEFORE SHRI ARJAN DEV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL,  
KANPUR, U.P.

Industrial Dispute No. 143 of 1987

In the matter of dispute between:

The Secretary,  
O.N.G.C. Karamchhari Union,  
87/1/1 Ballupur,  
Deharadun, U.P.

AND

The Chairman,  
Oil & Natural Gas Commission,  
Tel Bhavan,  
Dehradun, U.P.

#### AWARD

1. The Central Government, Ministry of Labour, vide its notification No. L-30012/2/87-D.II(B), dated 9-9-87, has referred the following dispute for adjudication to this Tribunal:

Whether the action of the Management of ONGC in not providing regular employment and terminating the services of Shri Dinesh Chand Contingent Worker w.e.f. 1-1-86, is justified? If not, to what relief the workman is entitled?

2. The industrial dispute on behalf of workman Shri Dinesh Chand has been raised by ONGC Karamchhari Union (hereinafter referred to as Union for the sake of brevity). The case set up by the union is that the workman remained in the employment of ONGC as a contingent worker for 719 days from July, 1982 to December, 1985, as per details given in annexure I to the claim statement. He had worked continuously for 271 days from 5-7-83 to 31-3-84 and consequently qualified himself to be regularised in terms of certified standing orders of ONGC. But the management did not give him regular employment. Rather the management deprived him of his contingent employment without any information valid reasons and retrenchment compensation as admissible under law. Further the management discriminated him by appointing a number of junior contingent/casual employees. Their names are given in annexure II to the claim statement. The Union then alleges that the management has not respected various material agreement including those signed before ALC(C) Dehradun January 28, 31 and May 2nd, 1985 in connection with the employment of the said workman. Copies of those agreements are annexures 3(1), 3(2) and 3(3) of the claim statement. Lastly it is alleged by the Union that by virtue of his age, qualifications, experience and practice prevailing with the management the workman is entitled to be regularised w.e.f. 1-1-86. The Union, has therefore, prayed that the management be directed to absorb the workman in regular service w.e.f. 1st of January, 1986.

3. The management have contested the claim of the Union with regard to workman. They have filed a very lengthy written statement running into 47 pages. The management plead that what has been referred by the Central Government to this Tribunal is not an industrial dispute within the meaning of section 2(k) of I.D. Act, 1947, and consequently the Tribunal has no jurisdiction to make an award. The management further plead that prior to 2-5-85 Shri Dinesh Chand was employed intermittently, according to requirements of the Commission as a contingent worker. 2-5-85, before the A.L.C. (C), Dehradun it was made clear by the management representative that the management would not be able to provide regular employment to the workman. However, he could be engaged as a contingent employee as and when vacancy arose for specific periods without insistence that his name should be sponsored by Local Employment Exchange. The officer was accepted by not only by the workman but also by Shri D. R. Kothari, President of the Union, who represented the workman before ALC(C), Dehradun. The agreement so arrived a between the parties on 2-5-85 before the ALC(C), Dehradun, was honoured by the parties and thus it became final. In pursuance of the said agreement the workman was engaged during the months of July, August, September, November and December in the year, 1985, and further 16 days of the Month of October in that year. Vide memo dt. 13-12-85 of ONGC Directorate of Administration, Tel Bhavan, Dehradun his last appointment was upto 31-12-85. Thereafter, the workman never turned up nor offered himself for engagement as Contingent Worker whenever such vacancy arose. It seems that he was not agreeable and interested to be engaged as a contingent employee after 31-12-85. Rather it seems that he was desirous of being provided with regular employment which fact clearly comes out in his application dt. 22-8-86, moved by him before ALC(C) Dehradun. The last appointment being as contingent worker for a specified period and in conformity with the provision of clause (bb) of Section 2(oo) I. D. Act, the provisions of section 25B, 25F, 25G and 25H I. D. Act, are attracted at all. Thus there was no illegality in the action of the management.

4. Lastly, the management plead that since, he was not in the employment of the Commission after 31-12-85, the question of providing him with regular employment does not arise. In fact this question could not have been referred for adjudication to this Tribunal when the date of reference order is 9-9-87.

5. In support of its case the Union has filed the affidavits of Shri Dinesh Chand and in support of their case, the management has filed affidavit of Shri B. N. Sumbaly. Both the sides have filed a number of documents in support of their respective cases also.

6. The first point to be considered in this case is whether Shri Dinesh Chand workman had worked for 271 days during the period from 5-7-83 to 31-3-84. The case set up by the Union is that the workman had worked for so many days during the said period. Details have been given by the Union in annexure I to the claim statement. The position is disputed by the management.

7. In his affidavit the workman has said that he had worked for more than 240 days during the aforesaid period. There is no documentary evidence to prove it. Ext. M-1, in the copy of Certified Standing Orders for Contingent Workers of ONGC. The document has been admitted by the authorised representative for the union, Para 2 of the Certified Standing Orders provides that a workman who has been on the rolls of the Commission and has put not less than 180 days of attendance in any period of 12 consecutive months shall be a temporary workman and a temporary workman who has put not less than 240 days and who possesses the minimum qualification prescribed by the Commission may be considered for conversion as regular employee.

8. Annexure 3(1), to the claim statement is copy of the Mutual Agreement dt. 2-5-86, arrived at between the parties before ALC(C), Dehradun. The management have also filed the copy of the said mutual agreement and it is Ext. M-2. This agreement has also been referred to by the management witness in para 3 of his affidavit. It has been signed by the workman, Shri D. R. Kothari, President of the Union, representing the workman and Shri B. N. Sumbaly, Sr. Deputy Director Horticulture ONGC on behalf of the management. The material portion of this mutual agreement reads as under:

After detailed discussion, the management representative stated that they may not be able to provide regular employment to the workman in question but he can be engaged as contingent employees as and when vacancies arises for specific periods, without insisting for his name being sponsored by the Local Employment Exchange.

Since the proposition was agreeable for the representative for the workman as well as to the workman, the dispute was treated as resolved.

The above understanding is without prejudice to reopen the case by the union or by the Workman. If the workman had worked for 271 days during the period from 5-7-83 to 31-3-84, the President of the Union, would have surely insisted that this fact should appear in the agreement. He would have also insisted that while engaging the workman as contingent worker, he should also be considered for regular absorption in terms of Certified Standing Orders referred to above as he had put in more than 240 days of working and possessed the minimum qualifications prescribed by the Commission.

9. Had the workman worked for 240 days or more, in the event of his illegal termination he could have well sought shelter of Section 25 I. D. Act. Notice having not been given to him nor retrenchment compensation having been paid to him, he would have become entitled to reinstatement with full back wages. Therefore, to my mind the Union has failed to prove that the workman had worked for 240 days or more during the period 5-7-83 to 31-3-84.

10. The second point which arises for determination is whether the termination of service w.e.f. 1-1-86 amounts retrenchment within the meaning of section 2(oo) I. D. Act or not. According to the management it does not amount to retrenchment. The case is fully covered by section 2(bb) of Section 2(oo) which lays down that retrenchment does not include the termination of the service of a workman as a result of non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under stipulated period in

that behalf contained therein. Clause (bb) was inserted by Act No. 49 of 1984 w.e.f. 18-8-84.

11. Ext. M-5 is the copy of memo dt. 13-12-85, which has also been reproduced by management witness in para 6 of his affidavit. It shows that the last appointment of the workman was for a specific period i.e. for the period 1-12-85 to 31-12-85. The authorised representative for Union has waived the formal proof of these documents. So the case is fully covered by clause (bb) of Section 2(oo) I.D. Act. This being so it cannot amount to retrenchment. If it is not retrenchment then the provisions of section 25G will not be attracted.

12. Hence, the termination of services of workman cannot be held as illegal. In para 14 and 15 of his affidavit, management witness has made the averment that after 31-12-85, the workman did not offer himself for being engaged as contingent employee. There has been no cross-examination of the witness on this point by the Authorised Representative for the Union.

13. Held, therefore, that the action of the management of ONGC in not providing regular employment and terminating the service of Shri Dinesh Chand w.e.f. 1-1-86 is justified and consequently the workman is entitled to no relief.

14. The reference is answered accordingly.

ARJAN DEV, Presiding Officer  
[No. L-30012/2/87-D.III(B)]

क्र.सं. 619.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार य.पी. स्टेट सीमेंट कार्पोरेशन लि., इलाहाबाद सीमेंट फैक्टरी, मिर्जापुर के प्रबन्धन से सम्बद्ध निवासियों और उनका कर्मचारियों के बीच, अनुसंधान में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिनियम, 1947 के पंचाट का उपयोग करती है, जो केन्द्रीय सरकार का 28-2-89 का प्रावण हुआ था।

S.O. 619.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of U.P. State Cement Corporation Ltd., Dalla Cement Factory, Mirzapur and their workmen, which was received by the Central Government on the 28-2-1989.

#### ANNEXURE

BEFORE SHRI ARJAN DEV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL,  
KANPUR, UTTAR PRADESH

Industrial Dispute No. 182 of 1987

In the matter of dispute between.

Shri Damodar Upadhyay,

Authorised Representative of  
S/Shri Ram Surat Singh & Ram Kishore Mehta  
Vice President, Bhartiya Mazdoor Sangh,

Dalla, Mirzapur, U.P. Petitioner/Workmen

AND

The General Manager,  
U. P. State Cement Corporation Limited,  
Unit-Dalla Cement Factory,  
Dalla, Mirzapur, U.P. Opp Party/Management.

#### AWARD

1 The Central Government, Ministry of Labour, vide its notification No. L-29011/32/87-D.III(B) dated 26-11-1987, has referred the following dispute for adjudication to this Tribunal:

Whether the action of the Management of Dalla Lime Stone Mine, owned by U.P. State Cement Corporation Ltd. in terminating the services of S/Shri Ram Surat Singh and Ram Kishore Mehta, Beldars w.e.f.

20-9-86 is legal and justified? If not, to what relief the workmen concerned are entitled?

2. The dispute on behalf of the two workmen has been raised by Bhartiya Mazdoor Sangh, Dalla, Mirzapur, (hereinafter referred to as Sangh for the sake of brevity). The case of the Sangh is that the two workmen were appointed as Beldars by management of Dalla Lime Stone Mine on 23-9-84 and they had worked continuously upto 19-9-86 in the New Crusher Canteen run departmentally by the management. With effect from 20-9-86, the services of the two workmen were terminated and the said canteen was given on contract by the management. After some time the contract was rescinded and the management once again started running the canteen departmentally. The Sangh alleges that jointly to the two workmen are still working. The termination of their services being illegal, they should be reinstated in service with full back wages.

3. The management plead that the two workmen who were employed as Mustor Roll employees on daily paid basis had worked in the departmental Canteen at the New Crusher Plant which is out side the Mining Lease. As such in accordance with section 2(a)(ii), I. D. Act, 1947, the appropriate Government is the State Government and not the Central Government. Being so the present reference order made by the Central Government is without jurisdiction. The management further plead that after 1986 they were asked to stay away for a short period as the Canteen which was being departmentally run was closed and was given on contract to a contractor. The two workmen thereafter did not offer themselves for work else where with the management. Since, they were not retrenched the provisions of Chapter V-B of the I. D. Act, are not attracted. The management are still prepared to give employment to them if they physically offer themselves for employment on previous terms and conditions of service.

4. In its rejoinder the Sangh alleges that the Canteen in question does not lie outside the Mines. Further the canteen was given on contract by way of unfair labour practice.

5. In support of its case the Sangh has filed the affidavit of Shri Ram Kishore Mehta one of the two workmen and in support of their case the management have filed the affidavit of Shri R. P. Singh, Personnel Officer. Both sides have also filed a number of documents in support of their respective cases.

6. Although it is alleged by Sangh that the two workmen were recruited as Beldars on 23-9-84 for reasons best known to the management, the management have kept silent on it. The management have simply admitted the fact that the two workmen had worked in the Departmental Canteen till 19-9-86. This fact that the two workmen were engaged on 23-9-84 as Beldars stands proved from the un rebutted averment made by the Sangh witness Shri Ram Kishore Mehta in para 2 of his affidavit. Hence it stands proved that the two workmen had continuously worked from 23-9-84 to 19-9-86.

7. There is also no dispute about the fact that the services of the two workmen were terminated w.e.f. 20-9-86 on account of departmental canteen having been given on contract to a contractor. However, the management witness has set up a different case in his cross-examination when he says that the management stopped the running of departmental canteen after 19-9-86. A little later in his cross-examination he has admitted that the departmental canteen was given on theka for one month and it was thereafter that it was closed. No document has been filed by the management in support of the facts deposed to by management witness in his cross-examination. Therefore, in view of the specific admission of the fact in para 7 of the written statement that it was given on contract after 19-9-86, the evidence of the management witness to the contrary cannot be believed.

8. It is the specific case of the Sangh that after the termination of the contract, the management once again started running canteen departmentally. The Sangh has supported the fact by affidavit of Shri Ram Kishore Mehta. The management has preferred to be remain silent on it in the written state-



ment. There is no document from the side of the management to show that under any order of the management after the termination of the contract the running of the canteen was stopped. Thus there is nothing to make me disbelieve the case set up by Sangh that after the termination of the Theka, the management started running the canteen departmentally.

9. In his cross-examination, the management witness has admitted that at the time of termination of the services of the two workmen they were not given any notice or notice pay nor paid any retrenchment compensation. The two workmen having worked continuously for almost two years, the management in view of the provisions of section 25 H.I.D. Act, ought to have given them notice or notice pay besides retrenchment compensation. Termination of their services was therefore, illegal.

10. In para 8 of his affidavit the Sangh witness has admitted that whereas he has been given appointment w.e.f. 22-1-88, Shri Ram Surat Singh, has been given appointment w.e.f. 25-1-88. These facts are also admitted by management witness in para 3 of his statement in cross-examination.

11. Held therefore, that the action of the management of Dalla Lime Stone Mine owned by U.P. State Cement Corporation in terminating the services of S/Shri Ram Surat Singh and Ram Kishore Mehta Beldass w.e.f. 20-9-86 is legal nor justified.

12. Since, both the workmen have been given appointment as stated above, Shri Ram Kishore Mehta is held entitled to back wages for the period from 20-9-86 to 21-1-88 and Shri Ram Surat Singh is held entitled to back wages from 20-9-86 to 24-1-88. The reference is answered accordingly.

ARIJAN DEV, Presiding Officer  
[No. L-29011/32/87-D.III(B)]

का.चा. 620 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) का धारा 17 के अनुसूचन में, केन्द्रीय सरकार मिनरल एक्सप्लोरेशन कारपोरेशन, रांची के प्रबन्धन से सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुसूचन में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अतिक्रमण, नं. 2, अन्तर्गत के पंजाब को प्रकाशित करने हैं, जो केन्द्रीय सरकार का 1-3-1989 को प्राप्त हुआ था।

S.O. 620—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 2, Dhanbad, as shown in the Annexure in the Industrial dispute between the employers in relation to the management of Mineral Exploration Corporation, Ranchi, and their workmen, which was received by the Central Government on the 1-3-1989.

#### ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No. 2) AT DHANBAD

#### PRESENT

Shri I. N. Sinha,

Presiding Officer

Reference No. 1 of 1988

In the matter of an industrial dispute under Section 10(1)(d) of the I. D. Act., 1947.

#### PARTIES :

Employers in relation to the management of Area Manager, Mineral Exploration Corporation, Ranchi and their workmen.

#### APPEARANCES :

On behalf of the workmen.—Shri B. Joshi, Advocate.  
On behalf of the employers.—Shri R. S. Murthy, Advocate.

STATE : Bihar

INDUSTRY : Mineral Exploration.

Dated, Dhanbad, the 24th February, 1989

#### AWARD

The Govt of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-29012/11/85-D.III(B), dated, the 29th December, 1987.

#### SCHEDULE

"Whether the action of management of Mineral Exploration Corporation Ltd., Ranchi, terminating the services w.e.f. 9-11-84 and non-grant of prescribed pay scale of Security Guard to Shri Baban Pandey, contingent worker is justified? If not, to what relief the workman is entitled?"

The case of the concerned workman Shri Baban Pandey is that he was appointed as Security Guard by the management of Mineral Exploration Ltd., Ranchi on 1-11-82 and worked continuously for a period of more than 2 years. His services were terminated with effect from 9-11-84 without assigning any reason. He was appointed by the Area Manager of the corporation verbally and his services were also terminated verbally by him. The management followed unfair labour practice by not issuing letter of appointment or letter of termination of the services of the concerned workman.

The concerned workman during the entire period of his service was not paid wages according to the scales of pay fixed by the management for Security Guards. His name was purposely kept outside the prescribed register for wages and he was paid his wages through vouchers. The management paid the concerned workman consolidated rate of wages @ Rs. 190 per month which was even below the minimum wages prescribed by the Government. The management took a plea that the different wages are payable to the permanent and contingent workmen. The concept of equal pay for equal work was not applicable in the case of the concerned workman. The concerned workman requested the management to put his name in the prescribed register of wages under payment of wages Act and to pay him the wages according to the scale of pay fixed by the corporation for security guards. The management employs more than 100 workmen. The management retrenched the services of the concerned workman without obtaining permission from the Govt. and without paying him notices pay and retrenchment compensation under Section 25F of the I.D. Act although he had put more than 240 days of Attendance in each year. The management had not chargesheeted the concerned workman. As the provision of Section 25F of the I.D. Act were not complied with the termination of the services of the concerned workman was illegal void and inoperative in law.

When the dispute was raised by the concerned workman, the management took the plea that the concerned workman was appointed as contingent worker and his services could be terminated at the pleasure of the Area Manager by verbal orders, and as such no notice pay and retrenchment compensation were required to be paid to such workmen. On the contrary the duty charts of the Security Guards do not distinguish between the duties of regular and contingent security guards. The word 'contingent/ temporary workmen' has been defined in the certified standing orders of the management. A person engaged on work which is essentially of temporary in nature likely to be finished within a limited period is a 'contingent workman.' The duty of security guards continues so long the building and establishment exists and the question of the job being essentially temporary in nature does not arise. The concerned workman was posted as Guard of the stores and buildings in the different shifts. The stores and the buildings are in existence and as such the plea of the management that the concerned workman was a contingent employee was absurd and contrary to the provision of the certified standing orders which stipulate that the provision of service of notice or payment of wages in lieu of notice and retrenchment compensation as provided under the I.D. Act must be complied with in respect of all categories of workmen including contingent.

temporary workmen at the time of termination of services of workman. The management cannot terminate the services of a contingent employee who has completed one year continuous service without complying with the provisions of the I.D. Act.

The management of Mineral Exploration Corporation Ltd., is engaged in exploration and production of minerals, raw material and fuels for metallurgical industries. It opens up mines at different parts of the country for searching proper minerals. The corporation comes within the definition of the word "state" as defined in Article 12 of the Constitution of India and is controlled by the Central Govt. the President of India being the holder of 99 per cent of its share. The management of the corporation was bound to follow the rules of law with regard to the recruitment, promotion and termination of services of its workmen.

The concerned workman filed a petition before the ALC(C) for reinstatement on his original job. The management took a plea before the ALC(C) that the concerned workman was engaged on security contract and not as a workman. It also pleaded that neither the provisions of the I.D. Act nor the provision of the Certified Standing Orders applied in respect of the concerned workman. The conciliation proceedings started by the ALC(C) ended in future and at the first instance the Central Government did not make reference under wrong assumption. Thereafter the concerned workman filed a Writ before the Hon'ble High Court forgetting his dispute referred to the Tribunal. The present reference was made by the Central Government as per direction of the Hon'ble High Court in the said Writ petition No. CWJC. 564 of 1987 filed by the concerned workman. It is submitted on behalf of the concerned workman that the action of the management in terminating the services with effect from 9-11-84 is illegal and unjustified and that he is entitled to be reinstated with full back wages and consequential benefits. It is further submitted that the action of the management in not granting the prescribed scale of pay of security guards to the concerned workman is illegal and unjustified and that the concerned workman is entitled to get the prescribed scale of pay of security guards from the date of his appointment.

The case of the management is that the concerned person was not a workman within the meaning of Section 2(s) of the I.D. Act. Apparently this is a dispute under Section 2(A) of the I.D. Act and in such dispute the issue relating to the pay scales cannot be covered. The case of the management further is that the Security job was entrusted to the concerned workman Shri Baban Pandey as contractor and he accepted the same by engaging his own man. He was given lump sum payment for getting the security jobs performed. During the period the concerned workman performed the job, he was a contractor and a workman. The concerned workman himself used to pay his workers out of the lump sum amount paid to him by the management. A contractor who undertakes to execute a specified job for an establishment can at no stage of imagination be considered as a workman. At other time the concerned workman was engaged as a contingent worker whenever there was shortage of security guards. On some occasions he had put in extra work and he was made extra payment for the same. The concerned workman had at no time worked as an employee or worker for a period exceeding 180 days in any continuous period of 12 months in the capacity of contractor or costing worker. The concerned workman was made payment through vouchers for the jobs performed by him. The management has a system of engaging contingent workers and a provision to this effect has been made in the certified Standing Orders of the Company. After something when there was no longer any work to be given to the concerned workman, the management did not provide him with any work. This type of stoppage of work could not be brought under the scope of termination of services. A contingent worker is engaged from day to day and when there is no work for him he is not provided with such work. Thus there was no question of termination of the services of the contingent worker. He has no right to continue in the employment of the management when the management itself has not employed him on any assurance that he will be provided continuous employment. The management had

hired a building which was used for storing unserviceable stores. The said building was vacated by the management towards the end of November, 1984 after disposal of the stores materials. After vacating the said building there was no requirement of security services and the contract for providing such security services was not required to be continued. The concerned workman was quite aware of this position. The concerned workman was paid wages which the management was paying to other contingent workers. The management is engaged in mineral exploration work for other companies and undertakings on a contract basis and it does not have any mine of its own. It is a Government company wholly financed by the Central Govt. The management does not issue any letter of appointment to the contingent workman who are engaged from day to day. On the above fact it is submitted on behalf of the management that the reference order is illegal and misconceived, the management is justified in taking action in terminating the services of the concerned workman with effect from 9-11-84 and the question of pay scales cannot be considered by this Tribunal in the present reference. Accordingly it is proved that the concerned workman is not entitled any relief.

The points for decision are (1) whether the termination of the services of the concerned workman by the management with effect from 9-11-84 is justified, and (2) whether non-grant of prescribed pay scales of security guard to concerned workman is justified.

The management examined two witnesses and the concerned workman examined himself in this case. The documents of the management have been marked Ext. M-1 to M-13 and the documents of the concerned workman are marked Ext. W-1 to W-4.

It is the admitted case of the parties that the concerned workman had worked in some capacity or the other under the management from 1-11-82 to 9-11-84. The case of the management is that at first the concerned workman was engaged for security the services on contract and that thereafter he had worked on some occasion as contingent workman. The trump card document of the concerned workman is Ext. W-1 which is a certificate dated 17-11-84 issued by Shri D. S. Reddy Area Manager of the management under whom the concerned workman was engaged.

The said certificate shows that the concerned workman Shri Baban Pandey was working in the management's organisation under Ranchi area office as a Watchman on contingent basis since 1-11-82. The services of the concerned workman was terminated with effect from 9-11-84 and obviously this certificate Ext. W-1 was issued after about a week of the termination of the services of the concerned workman. This certificate clearly shows that the concerned workman was working as a watchman on contingent basis since 1-11-82. The management has challenged the correctness of the facts stated in Ext. W-1 although it has not denied the certificate issued by Shri D. S. Reddy who was the Area Manager at Ranchi when Ext. W-1 was issued. MW-1 Shri K. Mahali is working as Asstt. Manager, Personnel, Administration of Mineral Exploration Corporation Ltd., at Ranchi since September, 1983 and the security department is under his charge. He has stated that the concerned workman for sometime was engaged as contractor for providing security services for office building at Ranchi and that the concerned workman had engaged his own man for the job of security services. He has stated that the concerned workman was paid through vouchers and they are marked Ext. M-1 to M-16. He has further stated that the concerned workman was engaged subsequently as contingent watchman. He further stated that the contractors are paid by vouchers and the regular workmen are paid through av sheets. He has stated that he had enquired from S. Reddy regarding the certificate of Ext. W-1 and he learnt from him that he had issued the same so that Baban Pandey gets some employment somewhere, and that the contents of Ext. W-1 are not correct. MW-2 is the Personnel Officer Executive Trainee Personnel and Administration and ad joined MEC at Ranchi in December, 1984. He had joined at Ranchi after the termination of the services of the concerned workman. Ext. M-11 is a letter dated 9-12-88 written by MW-1 Shri K. Mahali to Shri G. S. Reddy,

General Manager, regarding the certificate dated 17-11-84 (Ext. W-1) issued to Shri Baban Pandey certifying that he had been working in Mineral Exploration Corporation Ltd., upto 17-11-84. Ext. M-12 dated 17-11-84 is the reply of Shri D. S. Reddy to Ext. M-11. He has stated that Baban Pandey was engaged as a contractor for different jobs and the certificate in questions given to him in good faith to facilitate him in getting employment with same private company. It cannot be expected from an Officer of the rank of General Manager like Shri Reddy that he would be issuing false certificate to any contractor who had worked under him. Although the management had tried to bring a letter from him, Shri D. S. Reddy had no course to some and state the facts before the Tribunal as stated in Ext. M-12. The fact that what Shri Reddy was now stating in his letter Ext. M-12 is not correct appears from the office order regarding duty roster for the security services at Ranchi Area Office which are marked Ext. W-2 series. The duty roster are in respect of security guards regular and contingent for the months of January, 1984 to November, 1984. All these duty roster will show that the concerned workman Shri Baban Pandey was given duty in the different shifts along with the regular security guards. The heading of the office order regarding duty roster itself shows that it is a duty roster of the security guards regular and contingent. It is obvious therefore that as the concerned workman was not a regular security guard, he was working as a contingent security guard almost throughout the year 1984 as appears from Ext. W-2 series. This Ext. W-2 series do not show that the concerned workman was put on roster duty of security guards as a contractor. I hold therefore that these office orders regarding roster duty of security guards shows that the concerned workman had worked as a contingent security guard in 1984. The facts stated in Ext. M-12 by Shri Reddy therefore is falsified that the concerned workman was always working as a contractor.

The management has filed Ext. M-1 series which are receipts under the signature of the concerned workman showing that the concerned workman had received from the management towards the security services during the different months of 1983 and 1984. It is stated by the management that the concerned workman was engaged as a contractor for rendering security services for which vouchers payment was made to him and the concerned workman used to give signature on the receipt. These receipts show that payment was made to the concerned workman towards the security services in respect of the different buildings of the management. It is nowhere stated in this receipt that the concerned workman was receiving the said amount as contractor for rendering security services. MW-1 has stated in page-4 of his cross-examination that except vouchers there is no other document to show the number of attendance of the concerned workman. He has stated that he has not produced all the vouchers in connection with the concerned workman from November, 1982 to November, 1984. He has also stated that there is entry of the amount mentioned in the vouchers in the account book/cash book. Thus from the evidence of MW-1 it will appear that there were other vouchers and receipts in respect of payment to the concerned workman but those vouchers have not been produced. The management could have produced those vouchers or even the account book/cash book which finds entry of the payment through vouchers to the concerned workman. If all those documents had been produced by the management it could have shown the number of attendance of the concerned workman. The withholding of those documents are not without purpose. Those documents would have shown the number of days worked by the concerned workman in rendering security services. Ext. W-1 which is a certificate issued by the Area Manager shows that the concerned workman was working as a Watchman on contingent basis. MW-1 has stated that pay has to be made on the basis of wagesheets in respect of all the workmen permanent and contingent under the Payment of Wages Act. He has stated that as per the duty chart Baban Pandey had worked as contingent workmen and that as per Standing Orders contingent worker is a temporary worker. He has stated that Baban Pandey had been paid on voucher along but the management is paying wages on wage sheets to other contingent workers. A reason was suggested in the cross-examination of MW-1 on behalf of the concerned workman

man on wagesheets as he was not being paid wages even according to the Minimum Wages Act. The management have not produced any document to show that the concerned workman was engaged to do the security services as contractor. No witness has been examined on behalf of the management to show that any person other than the concerned workman was working as a security watchman in respect of which payment was made to the concerned workman vide Ext. W-1 series. The concerned workman WW-1 has stated that he had worked in Mineral Exploration Ltd. Ranchi as Security Guard from 1-11-82 to 9-11-84 continuously and that his attendance in each calendar year was more than 240 days. He has stated that he did not get any appointment or termination letter. The management has also admitted that no appointment letter or termination letter was issued to the concerned workman. He has stated that Ext. M-1 was granted to him by Shri D. S. Reddy in respect of his employment and its contents are correct. His evidence on this fact appears to be true. There was no reason for Shri D. S. Reddy to be so much interested in the concerned workman so as to give a false certificate to him. I hold, therefore, that the concerned workman was working as a contingent security guard of the management and that he was not working as a contractor to render security services.

Ext. M-2 is the certified standing orders of the management. The classification of the employees are stated in clause 3 of the Standing Order. According to clause 3(b) "contingent/Temporary" workmen is one who has been engaged on work which is of essentially temporary nature likely to be finished within a limited period. According to the evidence of MW-1 it appears that out of the 3 buildings of the management at Ranchi one building was vacated and as such the concerned workman was not engaged as contingent worker with effect from 9-11-84. The concerned workman WW-1, on the other hand, has stated that out of the three buildings of the management for their office at stores one office was shifted to Tipudana 6 K.M. away from the previous office building and the security guards from the old building and the security guards from the old building was posted at the new building. He has also stated that it was not correct to say that the management had no requirement for security guards and as such the management had stopped his work. He has stated that the office at Ranchi is still continuing under the same condition and that the post of security guard is permanent and that no contingent workman is appointed as Security Guard. I have stated the above evidence to show the reason for stopping the work of the concerned workman on the ground of vacating one office building is not establish and as such the reason of the stoppage of the work of the concerned workman also does not appear to be correct. The offices of the management are in existence at Ranchi and they had require security personnel as before and there does not appear to be any reason to stop the concerned workman. The management obviously did not terminate the services of the concerned workman by giving any reason to him. Be that as it may, I have already come to a conclusion that the concerned workman was working as contingent security guard and the documents and evidence adduced in the case and the documents withhold by the management only go to show that the concerned workman had attendance of more than 240 days in each calendar year of the 2 years in which he had worked as security guard. Clause 36 of the Standing Orders of Ext. M-2 deals with discharge and termination of services. Clause 36(a)(iii) provides that in the case of contingent and casual employees no notice under the provision of I. D. Act, 1947 is required to be given when the management terminates the services of an employee. Clause 36(c) provides that in case of termination of employment by way of retrenchment due to completion of work of temporary industrial establishment the provision of chapter-VA of the I. D. Act regarding retrenchment and re-employment shall be followed. Section 25F of the I. D. Act provides that no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched until one month's notice in writing or wage for the period of the notice is paid and the workman has further been paid at the time of retrenchment compensation which shall be equivalent of 15 days average pay for every completed year of continuous service or any part thereof in excess of 6 months and notice in the prescribed manner is served on the appropriate government. Admittedly none of these 3 pre-requisites of retrenchment have been complied with by the management although the concerned workman

had completed more than 240 days of attendance in each of the 2 calendar years in which he had worked as security guards. The termination of the services of the concerned workman therefore is not legal. It will appear from the facts that under the provision of the I. D. Act compliance of the conditions laid down under Section 25F of the I. D. Act was must and as the same has not been complied with the provision of clause 36(a)(iii) has been violated. In view of the evidence discussed above I hold that the termination of the services of the concerned workman by the management with effect from 9-11-84 is not justified.

#### Point No. 2

Admittedly the concerned workman was not paid the scale of security guards prescribed for them by the management and that the concerned workman was paid contingent wages at a much lower rate. The management has referred to Ext. M-3 which is a memorandum of settlement arrived at between the management and their workmen under Section 12(3) of the I. D. Act on demands regarding wage revision and other related matter. This settlement covers all categories of workman employed by the management and the said revised wage structure came into effect from 1-4-84. In clause 3.1 page 8 of the Ext. M-3 there is the decision regarding the daily wage of contingent workmen with effect from 1-4-84. It appears that the wages of unskilled contingent workman was fixed at Rs. 10.50, semi-skilled @ Rs. 12 and so. There is a fitment table forming part of the settlement. It will appear from annexure-II/A that normally the unskilled contingent workmen were getting wages @ Rs. 9 per day. It is submitted on behalf of the management that the concerned workman was being paid wages as arrived at in the settlement and that he was not entitled to the regular pay scales of regular security guards of the management.

The workmen have referred to a decision reported in AIR 1988 Supreme Court 1504=1988 Lab IC 1673 which deals with "Equal work equal pay". Their Lordships have stated in para 7 of 1988 Lab IC that though Article 39 is included in the chapter of directive principles of state policy but it is fundamental in nature. The purpose of the article is to fix certain norm and economic goals for avoiding any discrimination amongst the people doing similar work in matters relating to pay. MW-1 has stated that contingent security guards and permanent security guards were employed on rotation in shifts. He has stated that the management has no paper or chart to show as to what is the nature of duties to be performed by contingent watchman and the regular watchmen placed in the different shifts. He has no doubt stated that the contingent guards and regular guards do not do the same nature of jobs in the different shifts but has failed to spell out the different nature of job of security guards being performed by contingent guards and regular guards. The roster duty orders do not make any difference in the duty of contingent and regular security guards. It will appear from Ext. W-2 series that the concerned workman was working as security guard in the different shifts alone as in the case of other regular security guards and was also sometimes performing the job along with regular security guards hence it cannot be said that the concerned workman was doing different type of job of security guards from the job of the regular security guards. It is apparent therefore that the concerned workman was doing the same duty as that of the regular guards. Their Lordships observed in the decision cited above "It is too late in the day to disregard the doctrine of equal pay for equal work on the ground of one employment being temporary and the other being permanent in nature. A temporary or casual employee performing the same duties and functions is entitled to the same pay as paid to a permanent employee". Having said principles in view it has to be held that as the concerned workman although working as a contingent security guard was performing the same duty and function as that of a regular security guards and as such he is entitled to the same pay as paid to a permanent regular security guards of the management. In the above view of the matter I hold that nongrant of prescribed pay scale of the security guard to the concerned workman is not justified and I hold that the concerned workman is entitled to the same scale of pay as that of regular security guards of the management on the principles of "equal work equal pay".

In the result, I hold that the action of the management of Mineral Exploration Corporation Ltd., Ranchi terminating the services of the concerned workman with effect from 9-11-84 is not justified and as such the concerned workman will be deemed to continue as a security guard and he will continue to be a security guard from 9-11-84 onwards. I further hold that the non-grant of prescribed pay scale of security guard to the concerned workman is not justified and as such the management is directed to pay the scale of pay of security guard to the concerned workman from 9-11-84 when the work of the concerned workman was stopped from his work. The prescribed pay scale of security guards is not being allowed to the concerned workman prior to 9-11-84 as the concerned workman had not raised the said dispute prior to his stoppage of his work. The management is directed to allow the concerned workman to join as Security guard within one month from the date of publication of the Award and the management is also directed to pay all his duties within 2 months of his joining of the job as indicated above.

This is my Award.

I. N. SINHA, Presiding Officer  
[No. I-29012/11/85-D III(B)]

नई दिल्ली, 9 मार्च, 1989

का.प्र. 621:--औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूच में, केन्द्रीय सरकार द्वारा, सेंट्री सीमेंट कारपोरेशन लि. की डाला लाईम स्टोन माईन के प्रबंधन के सम्बन्ध में कार्यकर्ताओं और उनके कर्मचारियों के बीच, कानपुर में विद्यमान औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिनियम, 1947 के प्रावधानों के अन्तर्गत प्रकाशित करने के, औद्योगिक सरकार को 28-2-89 को प्राप्त हुआ था।

New Delhi the 9th March 1989

S.O. 621:--In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Dalla Lime Stone Mine of U.P. State Cement Corp. Ltd. and their workmen, which was received by the Central Govt. on the 28-2-89.

#### ANNEXURE

BEFORE SHRI ARIAN DEV PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL,  
KANPUR.

Industrial Dispute No. 151 of 1987

In the matter of dispute between :

The Secretary,

Bhartiya Cement Udyog Mazdoor Sangh,

At. & P. O. Dalla,

Mirzapur U.P.

Petitioner/Workman.

AND

The General Manager,

U.P. State Cement Corporation Limited,

Dalla Cement Factory.

P. O. Dalla,

Mirzapur U.P.

Opp. Party/Management

#### AWARD

1. The Central Government Ministry of Labour vide its notification no. I-29012/9/87-D. III(B) dated 22-9-87, has referred the following dispute for adjudication to this Tribunal :

Whether the action of the Management of Dalla Lime Stone Mine owned by U.P. State Cement Corporation Limited Unit Dalla Cement Factory, Dalla, in not absorbing Shri Ram Surat as Heavy Equipment Operator in the minimum of Scale of Pay as per Cement Wage Board w.e.f. 1-11-83 is legal & justified? If not, to what relief the workman concerned is entitled?

2. The industrial dispute in this case on behalf of the workman Shri Ram Surat has been raised by Bhartiya Cement Udyog Mazdoor Sangh Mirzapur (hereinafter referred to as Sangh for the sake of brevity).

3. The admitted facts are that the workman is employed in the Lime Stone Mine owned by U.P. State Cement Corporation Limited, Unit Dalla Cement Factory Dalla and is holding the substantive post of Mazdoor in the pay scale of Rs. 520-8-680 and since 1-11-83, he has been operating Small Escort Crane.

4. The case of the Sangh is that although work is being taken from the workman on the Small Escort Crane since 1-11-83, he has not been given proper designation and proper pay scale. Workman doing the same kind of work have been designated by the management as Heavy Equipment Operators and they are being given the pay scale of Heavy Equipment Operators. There are 3 pay scales of Heavy Equipment Operators :—

- (i) Grade "B" Rs. 590-990
- (ii) Grade "A" Rs. 630-1150
- (iii) Grade "V" Rs. 650-1290

As such the workman is atleast entitled to the pay scale of Rs. 590-990 w.e.f. 1-11-83. In the prayer made in the claim statement, the Sangh has demanded the pay scale of Rs. 630-26-1150, for the workman.

5. The management plead that as per seniority list, copy annexure I, the name of the workman appears at serial no. 5. The Chairman of the Board of Directors has decided to prepare a combined seniority list of all the Mazdoors unskilled workers working in the whole of the U.P. Cement Corporation irrespective of the place of their working and in such a list there is very likely hood of the workman becoming junior to about 140 workmen belonging to his category. The management further paid that the Small Escort Crane has got the lifting capacity of only one tonne. In fact the management require the services of a person to drive said crane but as due to administrative reasons regular recruitment was not possible, the workman was given an adhoc appointment as Small Escort Crane Driver/Operator w.e.f. 1-11-83 in an officiating capacity with lein on his original substantive post of Mazdoor in the scale of Rs. 520-8-680 (Mazdoor Category 'E' Grade). According to the prevailing practice in such cases of adhoc officiating appointment, till a workman continues to retain his lein on his original post, he is granted his pay in the scale of the original post plus the difference between his actual pay in his original scale and the minimum of one step higher scale of pay. Therefore, in the light of the said practice the workman is getting his pay in his original scale plus the difference between his pay and the minimum of one step higher grade "D" scale of Rs. 533-11-753. According to the management the Arbitration Award does not give any designation either to the category of Small Escort Crane Operator/Driver or the scale for such an Operator/Driver. The only details given in the Arbitration Award are in item no. 1 at page 62, copy annexure II. The description about Heavy Equipment Operator is given in item no. 43 at pages 67 and 68, of the Arbitration Award copy annexure III. Lastly, the management plead that the Central Government has acted without jurisdiction in making the present reference order as what has been referred was not the real dispute between the parties. The real dispute was whether demand raised by the Sangh in the Conciliation dt. 25-8-86 before ALC(C) Allahabad was whether the workman is permanently working as Heavy Equipment Operator w.e.f. 15-7-83 and further whether he should be declared permanent in the said post from the said date in the pay scale of Rs. 590-20-990. Hence, the workman is entitled to no relief.

6. In its rejoinder, the Sangh has controverted the facts alleged by the management. It has reasserted the facts by it in the claim statement. In support of its case Sangh has filed affidavit of Shri Ram Surat Singh and in support of their case, the management have filed the affidavit of Shri R.P. Singh, Personnel Officer Both the sides have also filed a number of documents in support of their respective cases.

7. There is no dispute about the fact that the substantive posting of the workman is as Mazdoor in the pay scale of Rs. 580-8-680. There is further no dispute about the fact that since 1-11-83, he has been operating Small Escort Crane.

8. The management's case is that the maximum lifting capacity of the said crane is one tonne. Management have corroborated it by the evidence of their witness vide para 8 of his affidavit. This fact remains uncontroverted from the side of the Sangh.

9. In view of the pleadings, the only question to be determined is what should be the scale of pay of workmen operating such a crane. Although the Sangh has claimed the relief that the workman should be given the pay scale of Grade "A" of Heavy Equipment Operator since 1-11-83, the workman in his cross examination has said that he wants that he should be given Grade "B" the scale of which is Rs. 590-20-990. The same thing is found stated in para 9 of the claim statement. On the other hand it is pleaded by management that according to the prevailing practice in the corporation in case of adhoc officiating appointment, till a workman continues to remain his lein in his original post he is granted his pay in the scale of the original post plus the difference between his actual pay in his original scale and the minimum of one step higher scale of pay. In the light of the said practice the workman is getting his pay in his original scale plus the difference between his pay and the minimum of one step higher grade "D" the scale of which is Rs. 533-11-753. In his cross examination the workman has deposed in reply to a question put to him that after every two or three months he is paid arrears calculated in the scale of pay of Grade "D". It is admitted to both the sides that there had been an Arbitration Award between the Indian National Cement and Allied Workers' and the Employers in the Cement Industry. The relevant extracts of the award has published in the Gazette of India extra ordinary dated July 29, 1983 have been led by the management. Ext. M-1 refers to these extracts. Para 132 of the Award refers of Scales of pay of different Grades as approved by the Arbitrator. They are as follows—

#### OPERATIVES

##### Grade

- E. Rs. 520-8-680
- D. Rs. 533-11-753
- C. Rs. 559-15-859
- B. Rs. 590-20-900
- A. Rs. 630-26-1150

Tally Checkers clerical lower Tech., and supervisor staff.

##### Grade

T.C.-I Rs.

II

III

IV

V. Rs. 650-32-1290

The three grades "B", "A" and "V" as given in para 8 of the claim statement are the same as have been referred to above.

10. Now I refer to item No. (11) as published at page 62 of the said Gazette. Column (2) of item No. II refers to—

- a. Crane Driver "C" (Skilled Lower)
- b. Crane Driver "B" (Skilled Upper)
- c. Crane Driver "A" (Skilled Highly)

Against these three kinds of crane drivers in the remark column there appear the following words—

"Overhead crane drivers operating O.E.T. Cranes saving lifting capacity of 15 tonnes and above will start in Grade "B" and will have progression to Grade "A" and Grade "V" depending on length of service efficiency quality of work etc."

Column No. 4 refers to job description. In that against Crane Driver "C" there appear the following words—

"Operators stationary or mobile crane to transport materials in the factory; carries out routine maintenance and makes adjustment for smooth and safe operation of the crane; has a general knowledge of the working of the clerical/mechanical equipment in the crane and all other work incidental to the above."

From the above it therefore, follows that the workman cannot be given the scale of pay of Grade "B" as the said scale can be given only to such workman as operate cranes having lifting capacity of 15 tonnes and above. Since, it is the admitted case of the parties that the workman has been operating the Small Escort Crane since 1-11-83, it will be presumed that he satisfies the job description as applicable to crane driver "C" i.e. Rs. 559-15-859. I may state here that in his cross examination the management witness has stated that there only one such crane the management and it is being operated by the workman since its acquisition by the management. I may further state here that the workman holds the licence of Transport Vehicle, Ext. W-1 is the copy of it. So in the circumstances irrespective of the fact that some others are senior to him in his substantive post, he cannot be denied the above scale of pay, in which he has been officiating since 1-11-83. Had any other senior to the workman been capable of operating Small Escort Crane, the management would have given the job of operating this crane to him and not to the workman. We are not concerned with the practice regarding payment of wages to which the management has referred in paras 16 and 17 of written statement. Since the workman has been operating this crane for the last about six years the management should create a permanent post for the operation of this crane and absorb the workman against the said post permanently.

11. The question of Heavy Equipment Operator to which the Sangh has referred has no meaning. I have shown above that according to the Arbitration Award there are 3 categories of Crane Driver "C", "B" and A.

12. Held therefore, that the workman Shri Ram Surat is entitled to pay scale in Grade "C" which is Rs. 559-15-859 w.e.f. 1-11-83. Further held that the workman Shri Ram Surat has been officiating since 1-11-83 as Crane Driver "C" in Grade of Rs. 559-15-859 and consequently he is entitled to the arrears of wages.

13. Reference is answered accordingly.

ARJAN DEV, Presiding Officer

[No. L-29012/9/87-D.III(B)]

V K. SHARMA, Desk Officer

नई दिल्ली, 14 मार्च, 1989

म. प्र. 622.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्वय में, केन्द्रीय सरकार हुट्टी गोल्ड माइन्स को. लि., हुट्टी के प्रबन्धन से सम्बद्ध नियोजकों और उनके कर्मचारों के बीच; अन्वय में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलूर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार की 7-3-89 का प्राण हुआ था।

New Delhi, the 14th March, 1989.

S.O. 622.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Bangalore, as shown in the Annexure, in the indl. dispute between the employers in relation to the management of Hutti Gold Mines Co. Ltd., Hutti, and their workmen, which was received by the Central Government on the 7-3-1989.

## ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT BANGALORE

Dated, 28th February, 1989

Central Reference No. 109/87

#### I PARTY

Shri Sharangappa,  
No. 16, 2-A, Lane,  
Hutti, Lingasugur Taluk,  
Raichur District  
(Karnataka State).

Vs.

#### II PARTY

The General Manager,  
Hutti Gold Mines Co. Ltd.,  
Hutti Lingasugur Taluk,  
Raichur District,  
(Karnataka State).

#### APPEARANCES:

For the I Party—Shri V. S. Naik, Advocate.

For the II Party—Shri K. V. Shivangi, Advocate.

#### AWARD

By exercising its powers under Section 10(1)(d) and (2A) of the I. D. Act, the Government of India, Ministry of Labour have made the present reference on the following point of dispute by its order No. L-43012/8/86-D. III(B) dated 1st May, 1987.

#### POINT OF REFERENCE

"Whether the management of Hutti Gold Mines Co. Ltd., is justified in dismissing Sri Sharangappa, Watchman, Security Department w.e.f. 13-2-1986 from service of the Company? If not, to what relief the said workman is entitled?"

2. The I party workman has then filed his claim statement and the statements made by him in brief, are as follows:

He was appointed as a watchman in 1973. The II party dismissed him from service on 13-2-1986. Earlier to that he was discharged from service in 1981 on the allegation that he had remained absent from duty. The said order was challenged in C.R. No. 10 of 1982. During the pendency of the said dispute, negotiations were held before the R.L.C. and the II party agreed to reinstate him with 60 per cent back wages. He reported to duties in April, 1984. He has been now dismissed by way of victimisation. The management wanted to get rid of him and therefore false allegations were made against him. When he was discharged in 1981, his wife suffered mental shock. He was required to spend a lot of money for her treatment. The Chief Medical Officer of the II party had referred the case of his wife to K.M.C. hospital, Hubli. As per the prescription issued by the hospital authorities, he had purchased the drugs and had applied for reimbursement. A false chargesheet dt. 22-5-85 was issued to him. He denied the charges. He never tampered with any medical bill. He had submitted the bills which he had obtained from medical shops. One Shri Noor Mohammed, Advocate was appointed as the Enquiry Officer. He did not hold the enquiry in accordance with law. On receipt of the findings from the Enquiry Officer, the second show cause notice dated



20-1-1986 was issued to him. He could not send his reply to the same and he had sought for time. Without giving him opportunity, he was dismissed from service. The findings of the Enquiry Officer are perverse. The General Manager is not empowered to dismiss him from service. The allegations made by the management do not constitute any misconduct as per the company's standing orders. Hence, it is prayed that he may be ordered to be reinstated with all the consequential benefits.

3. In the course of the hearing, the I party moved I.A. No. IV and sought for the amendment of the claim statement. The II party filed its objections. The parties were heard. By a considered order, the said amendment was allowed.

4. By virtue of the said amendment allowed on 12-9-1988, the I party has further contended as follows :

He was a member of the Executive Committee of the Hutti Gold mines staff and Employees' Union. He was taking active part in the activities of the Union. One Anantha Rao had taken medical advance of Rs. 400. The bills produced by him were altered. A chargesheet was issued to him and an enquiry was held. A minor punishment of withholding of increments has been imposed on him. One N. D. Deshpande and Suryanarayana Rao had cheated the company to the extent of Rs. 85,000. But Suryanarayana Rao has been exonerated. One A. Ramamurthy was working as incharge officer at Raichur. It was alleged that he had utilised Rs. 20,000 but no penalty has been imposed on him. The I party workman had been given an award of Rs. 200, since he had caught one Anandaraj, while committing theft. The management has indulged in unfair labour practice.

5. The II party has filed its counter statement and inter alia, it is contended as follows :

It is true that the I party workman was working with them as a watchman. It is not correct that he was discharging his work satisfactorily. Since he used to be habitually absent, his service was terminated in 1981. Although the matter had been referred to the Industrial Tribunal, the management had an open mind. The matter was negotiated before the R.L.C. and the management agreed to reinstate him on certain terms and conditions. The management did not have any grudge against him. He has committed the acts of misconduct, such as forgery, and cheating, in order to make unlawful gain for himself and wrongful loss to the management. His wife was being treated by the Chief Medical Officer of the Company. Her case was referred to experts by the Company at its own cost. In the months of January to March of 1985, her case was referred to K.M.C. Hospital, Hubli. He was eligible for medical reimbursement. While claiming the reimbursement, he altered the figures of the medical bills, which were issued by the druggist to him and claimed higher amounts and thus defrauded the company. On ascertaining the facts, the management found that he had committed misconduct under Clause 15(a) (n) and (z) of the certified standing orders. He denied the allegations and therefore an enquiry was held against him. The allegations made regarding the enquiry are not correct. They are denied. It is denied that the findings of the Inquiry Officer are perverse. The General Manager is the appointing authority and he has powers to take disciplinary action. A second show-cause notice was issued to him. It is denied that he has been victimised or the management had indulged in unfair labour practice. Taking into account the gravity of misconduct, he was dismissed from service. He resorted to dilatory tactics and did not send his reply to the second show-cause notice, though opportunities were given to him. The order of dismissal is justified.

6. The II party has filed additional counter statement after the I party workman amended his claim statement. Therein, it has been contended as follows :

It is denied that the management wanted to get rid of him. It is denied that he was a member of the Executive Committee of the Union. Since the misconduct alleged against him is established by adducing evidence, it is false that the management has victimised him. The case of Sri Anand Rao is still pending. The case of N. R. Deshpande had nothing to do with the company. Deshpande was an officer of the club. It is denied that Shri Ramamurthy misappropriated

Rs. 20,000. Whenever a new workman or a team of workmen do some good job, they will be eligible for appreciation and cash award. A cash award of Rs. 200 was given to the persons who were responsible for detecting theft. One Havidar and two security men, including the I party workman had done that job and the management had recognised the same. One Amaranna was the member of the Executive Committee from the watch and ward staff. The reference may be rejected.

7. In the context of the pleadings narrated above, one additional issue was raised to the effect whether the management proves that it has held the domestic enquiry in accordance with law.

8. Both the parties were permitted to adduce evidence and after recording their evidence, they were heard on the said issue.

9. By a considered order dated 10-12-88, the enquiry held by the management was found to be not sustainable. The management was permitted to adduce evidence and establish its case.

10. The management has examined in all MW-1 to MW-7 and has got marked Exs. M-1 to M-44.

11. The workman has examined himself and got marked Exs. W-1 and W-2.

12. The parties have been heard.

13. My finding on the point of reference is as follows :

The management of Hutti Gold Mines Co. Ltd., was justified in dismissing Sri Sharanappa, Watchman, Security Department, with effect from 13-2-1986 from service of the Company and that he is not entitled to any relief.

#### REASONS

14. In the order dated 10-2-1988, while recording a finding on Additional Issue No. 1, it has been observed that the II party management is permitted to adduce evidence and prove the allegations made in Ex. M-6. Ex. M-6 has been held to be the regular chargesheet. Ex. M-6 dated 19-8-85 reads that the I party workman had taken his wife to K.M.C. Hospital, Hubli for treatment on three occasions viz., from (1) 16-1-85 to 19-1-85, (2) 17-2-85 to 21-2-85 and (3) 11-3-85 to 21-3-85 and that on each occasion he had been paid a sum of Rs. 300 as advance. Regarding the first visit, it is alleged that he had submitted a bill dated 24-1-1985 for Rs. 580 and that he had claimed a sum of Rs. 580 for reimbursement. It is then alleged that in the said bill a sum of Rs. 105.60 P. had been claimed as the price of the drugs said to have been purchased under cash memo No. 16338 dated 17-1-1985 issued by Pai Brothers, Dharwad. It is then alleged that on due scrutiny, it was found that the said cash memo was genuine only to the extent of four Applicaps of sixty paise and that he had committed forgery by inserting two more drugs which could not be deciphered and thus he has fraudulently and dishonestly used the cash memo to make a monetary benefit of Rs. 105. It is then alleged that on 22-2-1985, he had submitted another bill for Rs. 461.50 P. for the period from 17-2-85 to 21-2-85 and that the bill showed that he had claimed a sum of Rs. 125 for the drugs alleged to have been purchased from the shop of Pai Brothers, Dharwad under cash memo No. M 7661 dated 17-2-1985 and that on due verification, it was found that the said cash memo was genuine only to the extent of Rs. 2 for vicks and the in section of remaining two items of illegible drugs for Rs. 123 was forged. The chargesheet reads that the I party workman has dishonestly and fraudulently forged or altered or caused to be forged or caused to be altered with the intention to cause and induce the II party to part with their money in his favour and that he did so with the intention of making unlawful gain for himself. It has been further stated that the I party workman however took back the cash memo and that his claim for Rs. 125 was disallowed. In para 4 of the chargesheet Ex. M-6, it has been alleged that in his bill dated 22-2-1985, he had further claimed a sum of Rs. 158.50 P. for the drugs alleged to have been purchased by him under cash memo No. 4563 dated 18-2-1983 from the Karnataka medical Stores, Dharwad, but that it was however not noticed



that the cash memo was of 1983 and not of 1985 and therefore the bill for Rs. 158.50 was allowed and he had received the said amount. It is further alleged that he intentionally deceived the 11 party by submitting the said bill and that he fraudulently and dishonestly induced the 11 party to pay him a sum of Rs. 158.50 P. In the alternative, he has been charged that even if the cash memo 4563 dated 18-2-85 is accepted as genuine to the extent of Rs. 4.75 P. for dropvic drops, he had committed misconduct in regard to the sum of Rs. 153.75 P. for four other items of illegible drugs. The 11 party workman has been then charged that on 29-3-1985 he had submitted another bill for Rs. 631.40 P. for the treatment of his wife for the period from 11-3-85 to 21-3-1985. It has been described therein that he had included a claim of Rs. 125 towards the drugs alleged to have been purchased by him under cash memo No. 17661 dated 18-2-85, said to have been purchased from Pai Brothers, Dharwad and that this was the cash memo presented by him earlier with the bill dated 22-2-1985, which he had taken back and that the said cash memo was genuine only to the extent of vicks of Rs. 2 and the remaining items of Rs. 123 was a forgery. It is further alleged that in his bill dated 25-3-85, he had claimed a sum of Rs. 126.40 P. towards some drugs purchased by him under cash memo 16861 dated 19-3-1985, issued by Pai Brothers, Dharwad and that in the said cash memo the figure "60" had been forged and altered as "160" to make a sum of Rs. 26.40 P. as Rs. 126.40 P. It is similarly alleged that he did so fraudulently and dishonestly in order to cause loss to the company and make unlawful gain for himself.

15. There is no dispute that the workman denied the charges, and thereupon the management had held the domestic enquiry.

16. In order to establish that the 11 party workman had purchased only four Applicaps valued at Rs. 0.60 P. from Pai Brothers, Dharwad and that he had not purchased any drug of Rs. 105.60 P. the management has examined MW-6 Ramachandra Pai, the Proprietor of the said drug shop. MW-6 Ramachandra Pai has sworn that since about 12 years, he is running the chemist shop at Dharwad under the name and style as "Pai Brothers" and that he has maintained the bill book, Ex. M-34. With reference to the carbon copy of the original bill No. 17661 dated 18-2-1985, marked as Ex. M-34(a), he has sworn that under the said bill only one tin of vicks vaporub for Rs. 2 had been sold and since it is the only one item sold, no total has been made. As regards carbon copy cash memo No. 16338 to be found in the bill book, Ex. M-35 at Ex. M-35 (a), he has sworn in para 3 that on 17-1-1985, four Applicaps had been sold for 60 paise. He has made a categorical statement that he had not sold any other drug under that bill. In para 4 of his evidence, he states that on 19-3-1985, he sold sixty tablets of Haxidol for Rs. 26.40 P. and the carbon copy counterfoil is at Ex. M-36 (a) bearing No. 16961. In para 5 of his evidence, he has made a specific statement that in these cash bills, no other items have been sold except those shown therein. Then he was shown Ex. M-32 which is the original of Ex. M-34 (a). In para 7 of his evidence, he swears that in Ex. M-32 except the date and the matter as "Vicks Rs. 2.00", the other matter is not written by them. He further swears that he does not know what the other items are. He has further stated that the other items of Rs. 117 and Rs. 6 and total of Rs. 128 have been added in the bill subsequently. On going through the carbon copy at Ex. M-34 (a), and the original Ex. M-32 it is as clear as day light that the only original writing in Ex. M-32 is "one Vicks Rs. 2.00 and the date as 18-2-85" and that it is in different handwriting and ink, whereas the first two items of some illegible drugs of Rs. 117 and Rs. 6 and the total shows as Rs. 128 are in a different handwriting and a different ink.

17. As regards the original of Ex. M-35 (a), he was shown Ex. M-27. In para 10 of his evidence MW-6 Ramachandra Pai swears that the original entry in Ex. M-27 is only four Applicaps and the amount shown is of sixty paise. He has emphatically stated that two more items of Rs. 60 and of Rs. 45 and the total shown as Rs. 105.60 P. were not there in the original. When we hold Ex. M-127 in just a position with Ex. M-35 (a), it would be obvious that the original entries were the date 17-1-85, four Applicaps 0.60 P. and that the said writings are in a different ink and that they are of a different handwriting as compared with the

two more items of some illegible drugs of Rs. 60 and Rs. 45 respectively. Even for an apparent appearance, the handwritings of the illegible drugs of Rs. 60 and Rs. 45 bear no resemblance with the handwriting and ink of four Applicaps and the date 17-1-85.

18. The witness, MW-6 Ramachandra Pai was shown Ex. M-30, which is the original of Ex. M-30 (a). In para 8 of his evidence, he has sworn that the original number of tablets written by him as "60" has been changed as "160", by prefixing figure "1" to figure "60" and that the amount has been changed as Rs. 126.40 P. In para 4 of his evidence, he has earlier stated that on 19-3-85, he had sold only sixty tablets of Haxidol for Rs. 26.40 P. and to that effect there is the carbon copy counterfoil, Ex. M-36 (a). Again, on a close look, it would be evident that the figure "1" is in a different ink and it has been prefixed to the figure "60" to make the number of tablets appear as "160" and similarly figure "1" has been prefixed to the original writing of Rs. 26.40 to make it as though the amount is Rs. 126.40. In para 8 of his evidence MW-6 reiterates the evidence given by him in para 4. In order to establish that these records are kept in the regular course of business, he vouchsafes in para 11 that these bill books are verified and checked by the Drug Inspectors and Commercial Tax Officers and that their books of accounts have been accepted by the authorities and that tax is assessed on the basis of these books. He has been questioned in para 18 whether he can state as to which of his then employees had written the original of Ex. M-34 (a). There is no dispute on the point that the 11 party workman had presented Ex. M-32 the original of Ex. M-34 (a). Regarding Ex. M-35 (a), he has been questioned in para 22 and to states that he cannot say as to who has written the original of Ex. M-35 (a). Again there is no dispute on the point that the workman had taken Ex. M-27, the original of Ex. M-35 (a) and had enclosed it along with his bill. As regards Ex. M-36 (a) MW-6 has stated that he has himself written the original of the same. Ex. M-30 is the original of Ex. M-36 (a). The evidence of MW-6 discloses that the drug sold under Ex. M-30 was a scheduled drug. There is nothing on record to show that the drugs sold under Ex. M-27 and M-32 were the scheduled drugs. If the other employees of MW-6 have sold the medicines shown in Exs. M-27 and M-32 it does not follow that those employees have made wrong entries in Ex. M-27 and M-32. In any event, as regards the manipulation of entries in Ex. M-30, there can be no doubt, since there is the sole testimony of MW-6 himself. The witness has been confronted with his statements made before the Enquiry Officer and it has been suggested to him that he had stated before the Enquiry Officer that the initials at Ex. P-5 (a) is his initial and that Ex. P-5 was issued under his supervision. The document marked by the Enquiry Officer as Ex. P-5 has been now marked as Ex. M-32. The witness has stated that he has not stated as per Ex. M-10 (a). In para 39, it has been suggested to MW-6 that he has stated before the Enquiry Officer that he has put his signature in Ex. M-27. Ex. P-3 is the document marked by the Enquiry Officer, which is now marked as Ex. M-27. The witness has denied that he has made such a statement before the Enquiry Officer. The statement is marked as Ex. M-10 (b). The variations to be found in the evidence of the witness recorded by the said Enquiry Officer and his evidence recorded in this court, are very minor in nature and secondly the documents are themselves eloquent enough to show that MW-6 is a truthful witness. In para 40 of his evidence, it has been suggested to him that all the drugs shown in Exs. M-27, M-30 and M-32 have been sold by him and that he had made it a practice to write vouchers and bills which do not show some items in the duplicates (carbon copies), in order to save tax and accordingly they have not been written. If indeed, MW-6 Ramachandra Pai had made it a practice to write vouchers and bills which do not show some of the items sold by him in the carbon copies, then the irresistible corollary would be either the duplicates should show erasers of some items, even though the originals show such items or the carbon copy should be altogether different and should bear no resemblance with the original bills. Looking at the bill books at Exs. M-34, M-35 and M-36, it can be observed that the originals at Exs. M-27, M-30 and M-32 are the genuine originals of the carbon copies to be found at Exs. 34 (a), 35 (a) and 36 (a). I find that there is absolutely no substance in the said suggestion made to him.

19. The management has examined MW-5 Shankarappa Malakatti, the Proprietor of Karnatak Medical Stores, Dharwad, in order to establish that under the original bill, Ex. M-29 he had sold 1x15 ml. dropovit drops for Rs. 4.75 P. on 19-2-1985 and that the carbon copy bill is at Ex. M-33 (a). In para 3, of his evidence, MW-5 swears that, on 18-2-1985 under cash memo No. 34563, he has sold the said drugs and the original bill is at Ex. M-29. In para 5 he adds that in Ex. M-29, besides the said dropovit drops, some more items are added showing that drugs of Rs. 22.50, Rs. 56.25, Rs. 45 and Rs. 130 had been sold. In para 7, he categorically swears that when the original M-29 was issued, it contained only one item of dropovit drops of Rs. 4.75 P. He identifies the duplicate at Ex. M-33 (a). On comparing Ex. M-33 (a) with Ex. M-29, one can easily make out that the original writing in Ex. M-29 were only the date and 1x15 ml. dropovit drops Rs. 4.75 P. and the rest of the writings were not there in Ex. M-29. Neither in Ex. M-34 (a), M-35 (a), M-36 (a) nor in M-33 (a), one can find that there is any eraser of any writing or entry in these carbon copies. There is not even a suggestion either to MW-5 or to MW-6 that these original at Exs. M-27, M-30, M-32 and M-29 are not the original documents of the carbon copy cash memos marked as Ex. M-33 (a) M-34 (a), Ex. M-35 (a) and Ex. M-36 (a) respectively. MW-5 and MW-6 have produced these carbon copy books of the bills at Exs. M-33, M-34, M-35 and Ex. M-36 from their own custody and there is nothing to suggest that these chemists of Dharwad had anything to do with the management. In para 12, it has been elicited from the cross-examination of MW-5 that the bill book at Ex. M-33 had been maintained for non-scheduled drugs. In para 22, he makes it clear that for selling the dropovit drops as shown in Ex. M-29, no prescription was required. He has been confronted with his evidence given before the Enquiry Officer and the witness has stated that he did not state before the Enquiry Officer, as per Ex. M-10 (c) or Ex. M-10 (d). In para 29 of his evidence, he has denied the suggestion that all the items shown in Ex. M-29 were sold from his shop and that the entire amount shown therein has been collected. The contention that these chemists have manipulated the carbon copies of the original bills in order to save tax has not been substantiated by anything on record. In the re-examination MW-5 Halakatti has explained that in regard to the said item, i.e. of dropovit drops, he was not the first seller in Karnataka. Thus, it is manifest that MW-5 had absolutely no cause to prepare an entirely different carbon copy at Ex. M-33 (a) or to erase some of the items which are now to be found in Ex. M-29. In the face of the admitted fact that the 1 party workman himself had submitted Ex. M-29 to the management, it does not lie in his mouth to say that Ex. M-33 (a) is not the carbon copy of the same. It would be immaterial as to which of the then employees of MW 5 Halakatti had issued Ex. M-29. On going through the evidence of MW-5 and MW-6 and on looking at the documents such as Ex. M-33 (a), M-34 (a), M-35 (a) and M-36 (a) on the one hand and the originals at Exs. M-27, Ex. M-30, M-32 and Ex. M-29 on the other hand, I find that the management has established that the drugs purchased by the workman were only those and only of the value as shown in Exs. M-33 (a), M-34 (a) M-35 (a) and M-36 (a) and not of the drugs as shown in Exs. M-27, M-30, M-32 and M-29.

20. The 1 party workman has examined only himself on the point as to how these bills were prepared, submitted, and how they were processed. In para 41 of his evidence, he swears that the company doctor had referred the case of his wife to the mental hospital, Dharwad and he had taken his wife to Dharwad four times. No further states that the company doctor used to give him letters and he used to take them and show them to the mental hospital doctors and after due examination the doctor at the mental hospital used to prescribe medicines, which he did not have, and then he used to purchase such medicines from the available medical stores. He further swears that the shop owners used to give him the bills and he used to pay the amount shown in the bills. He proceeds to say that then he used to show the bills to some persons, who-so-ever was available by his side for confirmation of the bill and used

to pay. In para 42 of this evidence, he states that he used to take the prescription and the bill of the medicines to the doctor of the mental hospital and again he used to take the same to the company doctor and the company doctor used to put his signatures on them. It according to him the workman had purchased the medicines as per the prescriptions, he ought to have preserved and produced the prescription. In Para 44, he swears that he has paid the amounts shown in the bills Ex. M-27, M-29, M-30 and M-32. Nothing prevented the 1 party workman from examining the doctor of the mental hospital to show that the other medicines which cannot be deciphered now, had been deciphered by him and shown to him and that he had confirmed that they had been prescribed by him and were according to the prescription given by him. If the 1 party workman had brought the prescription and the medicines and had also shown them to anyone of the company doctors and if they had confirmed that the medicines were the same, as shown in the prescription slip, again nothing prevented him from examining such a doctor. The statements made by MW-1 the workman Sharanappa and the case put forth by him that he had purchased all the medicines as shown in Exs. M-27, M-29, M-30 and M-32 has been disproved by the management beyond any thing of doubt and it has been further established by the management that the medicines purchased by him were only those as shown in Ex. M-33 (a) M-34 (a) M-35 (a) and M-36 (a).

21. MW-3 Dr. Punyamurthi was the Chief Medical Officer at the relevant time. His evidence discloses that if there was no particular facility in their hospital, they used to refer the cases to the outside government hospital at their own cost and the costs used to be reimbursed by the company. In para 5, he adds that the wife of Sharanappa was referred to the mental hospital, Dharwad and he had been granted an advance of Rs. 200. In para 6, he swears that the workman had gone to Dharwad in January 1985 and after his return he had submitted a statement of accounts and the bills. According to MW-3 at that time, he was absent and one Dr. Ashok was incharge of the hospital. Ex. M-26 has been identified to be the statement submitted by the workman and Ex. M-27 is the cash memo for the purchase of the medicine. Ex. M-26 clearly shows that he had claimed Rs. 105.60 P. as the expense of the medicines as per receipt No. 16338, Ex. M-27 is the said cash memo. Para 7 of the evidence of MW-3 shows that since Dr. Ashok had not made the endorsement on the front page the Finance Department had rejected the bill. In Para 8 of his evidence, MW-3 Dr. Punyamurthi swears that about two months later the workman submitted the bill and then he found that there were some additions in the bill, Ex. M-27, that the entries regarding some of the medicines were not legible, that the ink and handwriting of the portion marked as Ex. M-27 (b) was different than the ink and handwriting of other handwritings. In that connection, MW-3 Dr. Punyamurthi swears that he made a note and an endorsement in the margin of Ex. M-26 and also on the back side of Ex. M-27. As regards the bill submitted by him in February 1985, MW-3 swears in Para 10 that the workman had submitted two receipts along with the statement Ex. M-28. Ex. M-28 states at Ex. M-28 (a) that the workman claimed a sum of Rs. 125 as per bill No. 17661 dated 17-2-1985 and Rs. 158.50 P. as per Bill No. 4563 dated 18-2-1985. The evidence of MW-3 then discloses that however the workman took back one receipt from the said statement and the only receipt that remained was of 4563 dated 18-2-1985. The doctor has identified that Ex. M-29 is the said receipt. In regard to Ex. M-29, his evidence in Para 10 shows that the other four entries of items : (1) Rs. 22.50 P. (2) Rs. 56.25 P. (3) Rs. 45 and (4) Rs. 30 are illegible and that the handwriting and the ink of these items and so also of the total Rs. 158.50 P. are different. As regards the third bill submitted by him in March 1985, the evidence of MW-3 shows in Para 13 that as per Ex. M-31 he claimed a sum of Rs. 126.40 P. for the medicines of Bill No. 16861 dated 19-3-84 and the said bill is at Ex. M-30. The doctor further swears that he found a digit "1" added to the quantity and therefore he had put a query, saying that the bill had been altered. His evidence then shows that he had also filed the statement of accounts as per Ex. M-31 and the entry relating to the cash memo Ex.

M-30 is at Ex. M-31 (a). The bill Ex. M-31 shows that the workman had claimed Rs. 185 of cash memo No. 17661, which had been already produced by him along with Ex. M-28, but taken back. The evidence of MW-3 Dr. Punyamurthi shows in para 15 that since he found that the two items of Rs. 117 and Rs. 6 in Ex. M-32 were additions, he made an endorsement in the bill, Ex. M-31 that Rs. 2 only may be allowed. The said endorsement is marked as Ex. M-31 (b). As regards the cash memo Ex. M-29, the evidence of MW-3 in para 20 shows that he had already drawn that amount and had adjusted. It is to be seen from his evidence as regards the bill, Ex. M-26, the management did not take any action. The statements of accounts Exs. M-26, M-28 and M-13, obviously are not enclosed by any prescription slip. In para 24 of his evidence, in the cross-examination MW-3 explains that however in many cases the prescription slips are not enclosed, though the procedure is that the statement of accounts should be enclosed with the prescription slip and the payment bill. MW-3 has been confronted with the endorsement of his office, made at Ex. M-28 (d). The witness has explained that the certificate relates only to the attendance. There is nothing in his evidence to show that he had verified and had certified regarding the medicines also. The witness has been questioned as to how he found that these bills at Exs. M-29, M-30 and M-32 had been altered. In para 31 of his evidence, he states that because of his long standing experience in attending to such bills, he found that they were altered. In para 34, the witness further explains that in one bill, he has claimed Rs. 126.40 (the reference is obviously to Ex. M-30), whereas the price of 160 tablets will be around Rs. 70. He adds that in case of suspicion he used to verify the price list. There is nothing on record to dispute the evidence of MW-3 that the price of 160 tablets cannot be Rs. 126.40 P. The carbon copy of Ex. M-30 at Ex. M-36 (a) shows that for 60 tablets the druggist had charged only Rs. 26.40. From Ex. M-36 (a), it follows that the price of one tablet was Rs. 4.40 and in that event 160 tablets should have cost Rs. 70.40 only, whereas in Ex. M-30, it has been made to appear that the cost of 160 tablets was Rs. 126.40. There has been no suggestion made to either MW-6 Ramachandra Pai or to MW-3 Dr. Punyamurthi that at the relevant time the cost of one tablet of Hexidol was not Rs. 4.40. Thus, the irresistible inference arises that Ex. M-30 had been forged and manipulated. It is important to note that there is not even a suggestion made to MW-3 Dr. Punyamurthi that after the I party workman used to bring the medicines and the prescription from Dharwad, he used to show both of them to MW-3 or that he had shown them to any other doctor of the II party.

22. MW-4 Shri T. Suryanarayana, the Finance Manager has been examined by the management to show as to how these bills had been processed. His evidence shows that Ex. M-26 was the first bill submitted by the I party workman and it was enclosed with Ex. M-27. His evidence in para 5 discloses that the Deputy C.M.O. had made an endorsement as per Ex. M-26 (a) and because the CMO has to endorse the bill on the face of it, it was not passed and that it was returned. In para 6 of his evidence, he further, swears that in March, the C.M.O. certified it and sent it. He then adds that since the C.M.O. had observed that the receipt at Ex. M-27 has been altered, an endorsement has been made at Ex. M-26 (d). His evidence in para 7 discloses that the I party workman had submitted his second bill for Rs. 461.50 P. as per Ex. M-28 and he had referred to two cash receipts, but however he had taken back one cash memo of Rs. 125. The relevant entry it marked at Ex. M-28 (a). He has further sworn that the amount of M-28. In regard to the third visit, MW-4, Shri evidence, he states that as against the correct amount of Rs. 4.75 P. he had claimed a sum of Rs. 158.50 P. in Ex. M-28. In regard to the third visit, MW-4, Shri T. Suryanarayana has sworn that the workman had submitted his bill as per Ex. M-31, claiming Rs. 631.40 P. and he had enclosed two cash receipts including the one which he had taken back earlier. The said receipt has been marked as Ex. M-32, as stated earlier. The evidence of MW-4 Shri T. Suryanarayana, in para 10 shows that the workman had submitted receipt No. 16861 for Rs. 126.40, Ex. M-30 along with the bill Ex. M-31, but since there is a remark of the C.M.O. that it has been altered, he was paid to the extent of Rs. 26.40 P. The witness has made a cate-

gorical statement that one Mr. Vasudeva Rao was deputed to check up the matter, that the said officer went to the druggists and verified the documents and thus it was found that the workman had acted in a dishonest and fraudulent manner. In para 19, he has made a specific statement that on the basis of his own independent assessment and also on the basis of the remarks made by the C.M.O., he found that the I party workman had tried to defraud the company. The evidence of MW-4 Shri T. Suryanarayana thus substantiates on all the material points stated by MW-3 Dr. Punyamurthi. The evidence of MW-3 and MW-4 finds support from the unimpeachable documents, such as, Ex. M-26 to Ex. M-32. As observed earlier, MW-6 Shri Ramachandra Pai and MW-5 Halakatti are chemists and druggists of Dharwad. There is not even a suggestion they had any connection or any business relationship with the II party. There is not even a suggestion made to MW-5 Shankarappa Halakatti that he had kept the practice of writing more item of drugs in the original, where as he used to show less number of drugs in the corresponding carbon copies. No motive has been suggested to him to why he should indulge in any such practice. The evidence of MW-5 Shankarappa Halakatti and MW-6 Ramachandra Pai, the Druggists of Dharwad leaves nothing to doubt about the evidence of the management produced by examining MW-3 Dr. Punyamurthi and MW-4 Suryanarayana. As observed earlier, the documents at Exs. M-26 to M-32 lend all the support to the evidence of all these four witnesses.

23. MW-2 G. D. Deshpande, General Manager has been examined to show that after the Enquiry Officer MW-1 Noor Mohammed gave his findings, he studied the proceedings and came to the conclusion that it was a fit case for dismissal and thereafter he issued a second show-cause notice, as per Ex. M-16. His evidence further discloses that the workman did not send any reply and therefore he sent a reminder, but still then there was no reply. Exs. M-16 and M-17 substantiate his evidence on that point. His evidence then discloses that thereafter he passed the order of dismissal Ex. M-19. Ex. M-15 shows that the General Manager by an order dated 2-2-1976 has delegated his powers in favour of Deputy General Manager and to the heads of departments to take disciplinary action. Ex. M-15 thus shows that the Deputy General Manager and all the heads of departments were duly empowered to take disciplinary action against the employees working under them. The provisions of the standing orders at Ex. M-14, especially order No. 15 supports the evidence of MW-2 that the disciplinary action initiated against him was in order.

24. In para 53 of his evidence, MW-1 the workman concedes that he had submitted the statement of accounts as per Ex. M-26 and he has signed at Ex. M-26 (c). He further admits that Ex. M-26 was submitted for Rs. 580 and he claimed Rs. 105.60 P. and Rs. 115.40 P. for medicines as shown in Ex. M-26. It has been suggested to him that he did not produce any cash memo for the drugs of Rs. 115.40 P. In Ex. M-26, it has been clearly stated at Ex. M-26 (c) that as regards the seventh item, drugs of Rs. 115.40 P., the receipt had been lost. It is admitted by him that the cash memo Ex. M-27 for Rs. 105.60 P. had been enclosed by him to the bill. He asserts that he cannot say as to which were the medicines purchased by him under Ex. M-27. However, he has denied the suggestion that under Ex. M-27 he had purchased only four Applicaps of sixty paise and nothing else. It has been further suggested to him that he had inserted other entries in Ex. M-27. As regards Ex. M-28, MW-1 states in Para 53 that he does not remember as to how many bills he had enclosed to Ex. M-28. It has been suggested to him that he had enclosed two cash memos to Ex. M-28 and that he had taken back one cash memo of Rs. 125. In Ex. M-28, it has been shown by the I party that he had claimed a sum of Rs. 125 in respect of cash memo No. 17661 dated 17-2-1985. There is a writing in Ex. M-28 that it had been taken back by him. In Ex. M-31 dated 25-3-85 at Ex. M-31, (b) he had shown a claimed sum of Rs. 125 and stated that it related to bill No. 17661 of the last month. The writings at Exs. M-28 (a) and M-31 (b) do not leave anything to doubt that he had taken back the cash memo No. 17661 and again produced the same along with Ex. M-31. In regard to Ex. M-29, cash memo No. 4563 it has been suggested to MW-1 Sharanappa that he had purchased

only one medicine, Dropovit of Rs. 4.75 P. but that he has subsequently inserted some other medicines and has made it to appear as though he had purchased drugs of Rs. 138.50 P. He has however denied the suggestion. In para 55 of his evidence WW-1 admits that after returning from Dharwad he had claimed the amount shown in the Bill Ex. M-31. He further concedes that after the said bill was prepared, he got it read out to him and explained to him and then only he had signed it. In para 56, he admits that along with Ex. M-31, the statement of accounts, he had enclosed two cash memos viz., Ex. M-30 and M-32. He, however, denies the suggestion that since he had taken back the bill 17661, Ex. M-32, he had again produced it along with Ex. M-31, which is obvious from the two bills, Ex. M-28 and M-31 that Ex. M-32, the cash memo issued by Pai Brothers, Dharwad had been taken back by him and again produced by him along with Ex. M-31. His evidence in Para 56 discloses that he was unable to state which were the medicines purchased by him under the cash memo Ex. M-32. It has been suggested to him that under Ex. M-32, he had purchased only one medicine of Rs. 2 and that subsequently he had inserted the other matters and had made it to appear that as though he had purchased medicines of Rs. 125. Similarly, he is unable to state about the quantity of medicines or other particulars of the medicines purchased by him under cash memo Ex. M-30. It has been specifically suggested to him that under Ex. M-30, he had purchased only 60 tablets of Hexidol of Rs. 26.40 P. but that subsequently he has tampered with the same and had made to appear as though he had purchased 160 tablets for a sum of Rs. 126.40 P. It has been already discussed as to how the case of the workman that these cash memos at Ex. M-27, Ex. M-29, Ex. M-30 and Ex. M-32 have not been tampered with, cannot be believed at all.

25. The facts as to who are the scribes of the statement of accounts and bills at Exs. M-26, M-28 and Ex. M-31 or as to how the workman furnished instructions and documents to the scribes who prepared them or in what manner the workman got confirmed about the correctness of these bills, after they are prepared or the fact as to how and in what manner these cash memos at Ex. M-27, Ex. M-29, Ex. M-30 and Ex. M-32 disclose subsequent insertions are all within the special knowledge of the workman. He has to establish about these facts. Section 106 of the Indian Evidence Act states that when any fact is especially within the knowledge of any person, the burden of proving that fact would be upon him. The management has discharged the burden cast on it to prove that these cash memos at Exs. M-27, Ex. M-29, Ex. M-30 and Ex. M-32 have been tampered with by the oral evidence of MW-5 Halakatti and MW-6 Ramachandra Pai and the carbon copy books at Exs. M-33 to Ex. M-36. Soon after the management discharged the said onus, it was for the workman to adduce satisfactory evidence as to how he can claim that the entire contents of these cash memos are correct or that the bills submitted by him at Exs. M-26, M-28 and Ex. M-31 represent the actual amounts spent by him for the medicines.

26. Ex. M-2 dated 22-5-1985 is the unamended chargesheet. It is an admitted fact that subsequently it was amended as regards some clerical and other mistakes and then Ex. M-6 was issued to him. Ex. M-20 dated 10-6-85 is the explanation given by him for the said chargesheet. In the third para of Ex. M-20, the workman states that the bill submitted by him for Rs. 105.60 P. is in accordance with the prescription given by the doctor. He further states that a photocopy of the prescription issued by the doctor had been enclosed. Ex. M-12 is the photocopy of the said prescription. After the domestic enquiry was set aside—as not in accordance with the law,—the workman had all the opportunity to produce every piece of documentary evidence that was with him. In the event that he had enclosed a photo-copy of the prescription dated 17-1-85 of the outpatient department of mental hospital, Dharwad along with his explanation dated 10-6-85, Ex. M-20, nothing prevented him from producing the original outpatient slip before this court. In Ex. M-12, the photo-copy of the prescription slip, it is difficult to find that the concerned doctor of the mental hospital Dharwad had ever prescribed four Applicaps. The photo-copy, Ex. M-12 is very faint to make out the names of the drugs shown therein. In the explanation, Ex. M-20, the workman alleges that the duplicate bill issued by

Pai Brothers, Dharwad bearing No. 16338 dated 17-1-1985 for only 60 P. is a fabricated bill issued by the medical stores and that the business people always maintain double records and that it was false and unreliable. It was further alleged that it was done so only with an intention to take revenge against him. No suggestion has been made to MW-6 Ramachandra Pai that he had any cause to wreak vengeance against the I party workman or that with any ulterior motive he had issued a fabricated bill to the management. In Ex. M-20, about the Bill No. 4563, Ex. M-29, he explains that the prescription had been lost, but however, he has stated that the doctor who gave the prescription has the relevant record with him and he would produce the particulars of prescription within a few days. In relation to the bill No. 17661, i.e. Ex. M-32, he states that there has been no alteration in the said bill and that he asserts his claim for a sum of Rs. 125, though the medical officer has recommended for payment of Rs. 2 only. He has further stated that he was taking upon the matter with higher authorities. As regards the Bill No. 16861, Ex. M-30, he asserts that the medicine was purchased on 19-3-85, as per the recommendation of the mental hospital doctor, Dharwad and a photostat copy of the prescription was enclosed. Ex. M-20 is enclosed with two photostat copies of the prescription slip. The first one dt. 17-1-85 shows about four drugs, the second one dated 19-3-85 shows about one drug as *pas. Hexidol*. In the absence of the original outpatient slip, it is difficult to conclude whether the doctor had prescribed 60 tablets or 160 tablets. However, the question is not about the prescription of the particular medicine, but it is as to how much quantity of medicine he had purchased from Pai Brothers on 19-3-1985. The evidence of MW-6 Ramachandra Pai and the carbon copy of Ex. M-30 at Ex. M-36 (a) have established for the management that the I party workman had purchased only 60 tablets and not 160 tablets and that he had paid only Rs. 26.40 P. and not Rs. 126.40 P.

27. In regard to the amended chargesheet, Ex. M-6 dated 19-8-85, the workman had filed his written objection as per Ex. M-7. In Ex. M-7 also, he has reiterated his contentions as made out in Ex. M-20.

28. The learned counsel for the I party connected that MW-5 Shankarappa Halaketti and MW-6 Ramachandra Pai are not reliable, since it is shown that they have perjured as against the statement made by them before the Enquiry Officer. In the first place, the said statements had not been put to MW-1 Noor Mohammed, the Enquiry Officer. Secondly, even if it is held that they have been duly proved, it is evident from the very nature of the statements that they are not material. What is material is whether the carbon copies of these bills at Exs. M-33(a) to M-36(a) are untampered and genuine or whether the originals, as produced by the I party workman at Ex. M-27, M-29, M-30 and Ex. M-32 have been tampered and not genuine. On close examination of the evidence placed before me, a finding has been recorded that the original produced by the workman at Ex. M-27, Ex. M-29, Ex. M-30 and Ex. M-32 are the tampered bills and that the carbon copies at Exs. M-33(a) to M-36(a) are the genuine and untampered bills. The learned counsel for the I party then contended that these bills used to be stamped by the Medical Officer and that MW-3 Dr. Punyamurthi used to see the drugs and bills. There is nothing in the evidence of MW-3 Dr. Punyamurthi to indicate that the I party workman had taken all the medicines purchased by him and that he had shown them to the doctor and that the doctor had confirmed that the medicines were according to the prescription and the bills (cash memos). On the contrary, the evidence of MW-3 Dr. Punyamurthi shows that it was he who found that these cash memos have been tampered with. I cannot but reiterate what the I party has not examined the doctor who had issued the original prescriptions, the photostat copies of which he has enclosed to his explanation Ex. M-20. No attempt has been made by the I party even before me to explain as to what are all the drugs shown in these bills at Exs. M-27, M-29, M-30 and M-32 and whether all of them are in accordance with some of the prescriptions, the photostat copies of which have been enclosed to Ex. M-20, nor has been any attempt made to show about the market rate of such drugs at the relevant time and whether the amounts claimed in the statements of accounts by the I party workman bear any resemblance to the market price of such medicine. In my view,

the submissions made by the learned counsel for the I party do not hold water.

29. The learned counsel for the I party contended that these carbon copy book at Ex. M-33 to M-36 have not been audited and that they cannot be relied upon. On going through books of cash memos it would be as clear as day light that they have been maintained in the ordinary course of business and that there is nothing to believe the statements made by MW-5 and MW-6 in connection with the maintenance of these books. The submission does not carry any weight.

30. The learned counsel for the II party contended that the management has put forth convincing evidence and has established that the I party workman has manipulated the bill and has put forth false claims in order to make a wrongful gain and that the charges levelled against him have been established. On going through the evidence in between the lines, I was of the view that the management has established the charges as originally framed in Ex. M-2 as elaborated and explained further in Ex. M-6.

31. On 29-8-88, after the II party had closed its side by 5-8-88, the I party workman filed I.D. No. IV for amendment of the claim statement. On receiving the objections of the II party and hearing the parties, the said amendment, was however, allowed on 12-9-1988. In the said amendment, the I party has contended that in the case of one Anantha Rao who had put forth a false claim the II party held an enquiry that only a minor punishment has been imposed of withholding of some increments. It is then contended that in the cases of one N. D. Deshpande, A. Ramamurthy and Suryanarayana Rao who were guilty of various acts of misconduct, the II party has not dismissed them from service and that because the I party workman was an active trade union workman, he has been victimised.

32. The II party management has filed an additional counter statement and the allegations made in the amended claim statement have been denied.

33. In the case of Lala Ram Vs. the management of D.C.M. Chemical Works (1978 LAB I.C. page 716), it has been held that the question of victimisation or the management having a bias against the workmen would not arise in a case where the misconduct alleged against the workman has been duly proved. However, it has been stated that the order of punishment may be a measure of victimisation, if the punishment is shockingly disproportionate to the act of misconduct. The crux of the matter is, therefore, to examine whether the management has committed any discrimination and secondly whether the punishment is shockingly disproportionate to the act of misconduct.

34. The learned counsel for the II party strongly contended that the burden lies on the I party workman to establish that he has been victimised and that the evidence produced by the workman does not prove any such victimisation. In that regard he relied upon the case of National Tobacco Co. of India Limited Vs. 4th Industrial Tribunal (1960 II L.L.J. page 175). It has been described in the authority that victimisation is of two things; firstly the workman is innocent and that he is being punished because he has in some way displeased the employer and secondly he has committed an offence but the punishment imposed on him is not proportionate to the gravity of the offence. On facts, it has been already held that it is not a case wherein the workman is innocent but the management has punished him, because he has displeased them.

35. The learned counsel for the II party then placed reliance on the case of Hamdard Khan Works Vs. Their workman (1962 (2) L.L.J. page 772). It has been laid down in the authority if once it is held that the concerned workman is guilty of the misconduct alleged against him, the fact that he was an active member of the union not liked by the management becomes irrelevant.

36. The learned counsel for the II party further referred to the case of M/s. Aditya Mills Vs. Ramdayal and others (1974 LAB IC page 25). It has been stated in the authority that the victimisation consisted in punishing the employee for any object other than the one of inflicting just and appropriate punishment for a proven lapse. The foregoing discussion on facts would show that the management has established that the I party workman did commit the said acts of misconduct of tampering with the cash memos and putting forth false claims in order to make wrongful gain for himself and cause loss to the II party.

37. For the II party, the case of M/s. Bharat Iron Ores Vs. Babubhai Patel (1976 (32) F.L.R. page (2) was referred to to show that victimisation means that a person is made a scapegoat for no fault of his. It has been further laid down that the onus of establishing a plea of victimisation will be upon the person pleading it and since it is a serious matter the said fact should be established by convincing evidence and that mere allegations, vague suggestion and insinuations are not enough.

38. The learned counsel for the II party has then placed reliance on the case of the management of Bharat Kala Kendra Vs. R. K. Baweja (1980 (41) F.L.R. page 390). The authority deal with the criteria required for proving the allegation of victimisation. It has been laid down that mere allegations or vague suggestions or insinuations are not enough and that the contention of victimisation should be established by a cogent evidence.

39. The evidence of MW-7 Prithviraj, Deputy Finance Manager in Para 11 shows that the II party has issued a chargesheet against one Shri Anantha Rao, Clerk Grade I and that the enquiry against him is still pending and that no final orders have been passed as yet. He has further stated that the II party does not grant increments, if an enquiry is pending against a workman and that till date of his evidence, for that reason, two increments of Anantha Rao had been withheld. In para 48 of the evidence WW-1 Sharanappa, the workman has stated that in the case of Anantha Rao, three increments had been stopped and he had been retained in service. However, in para 54 in the cross-examination he concedes that he does not know whether the case against the said Anantha Rao is still pending enquiry and whether the management has not taken any decision, as yet in that case. He further admits that he has no documents to show that an order only withholding his increments has been passed in the case of Anantha Rao. He further concedes that he has no document to show as to what was the nature of misconduct committed by Anantha Rao, for which his three increments have been alleged to have been withheld. The contention of the workman that in the case of one Anantha Rao, who has put forth a false claim regarding the medical bill of his claim, only some increments have been withheld and he has been still retained in service has been disproved. The management has proved that the case of Anantha Rao is still pending and that has not indulged in any act of discrimination.

40. The workman has then contended that in the cases of one N. R. Deshpande and Suryanarayana Rao, the management has taken a lenient view whereas the I party workman has been dismissed from service for his trade union activities. It is the contention of the II party management that the alleged acts of misconduct of N. R. Deshpande and Suryanarayana Rao have nothing to do with the business of the II party company. In the case of additional counter statement led on 3-10-88 by the II party, in para 3, it has been stated that the allegation pertaining to N. R. Deshpande related to the club and the officers of the club and the said Deshpande settled the matter and that the said employee has already resigned from his job and went away. The evidence of MW-7 Prithviraj discloses in para 12 that Suryanarayana Rao was the Hon. Treasurer of the club, which is registered under the Societies Act and that he said Suryanarayana Rao has not committed any misconduct in regard to any affairs of the company. Para 13 of his evidence further discloses that N. R. Deshpande was a paid accounts assistant of the said club and that he did not commit any misconduct, but however he has resigned and gone away. In para 31, MW-7 Prithviraj further swears that the club has nothing



to do with the company and any misconduct committed in relation to the matters of the club has nothing to do with the business of the company. No convincing evidence has been placed by the workman to the contrary. On going through the evidence placed before me, a finding emerges that the said Suryanarayana Rao and Deshpande did not commit any act of misconduct in relation to the business of the I party and that the I party had no occasion to discriminate against the I party workman as compared to the misconduct alleged to have been committed by them, as the employees of the II party company.

41. The I party workman has then put forth a case that in the case of one Ramamurthy the management has taken a lenient view, whereas he has been victimised. The evidence of MW-7 shows that one Mr. Ramamurthy had been posted at Raichur office and that his job was to spend money from the imprest cash and render accounts to the company. It is admitted that Ex. W-2 was issued to Ramamurthy and that he was instructed as per Ex. W-2. Ex. W-2 reads that the said Ramamurthy was called upon to make good the shortage of Rs. 2,253.05p. and that he should remit a sum of Rs. 3,405.50 standing in his personal account in the State Bank of Hyderabad to the Company's current account of the Karnataka Bank, Raichur branch. Para 8 of the evidence of MW-7 Prithviraj shows that Ramamurthy had a job to spend money from the imprest cash and at that moment he was not able to produce the relevant vouchers for the shortage of the amount and therefore Ex. W-2 was issued to him. The evidence of MW-7 further discloses that the said Ramamurthy made good the said sum of Rs. 2,253.05 P. by 21-11-84 as per Ex. M-39, the pay-in-slip. If Ex. W-2 is dated 19-11-84, Ramamurthy has credited the amount within two days, i.e. by 21-11-84. Para 9 of his evidence further discloses that the said Ramamurthy transferred the said amount of Rs. 3,405.70 P. to the company's account of the Karnataka bank and he had sent a report as per Ex. M-40 dt 24-11-84 enclosing the bank advices as per Exs. M-41 and M-42 and M-43. Para 14 of the evidence of MW-7 indicates that from the P. F. Ramamurthy had drawn a sum of Rs. 2,700/- and he had passed a receipt as per Ex. M-44. The witness has emphatically denied the suggestion that the said Ramamurthy has committed misappropriation of any amount of the company. The learned counsel for the I party contended that the said Ramamurthy committed criminal misappropriation but he has been only transferred away from Raichur and thus there is discrimination in the case of I party workman in as much as he has been dismissed from service. The learned counsel for the II party contended that the work entrusted to Ramamurthy was liaison work and he was expected to spend amount for matters such as effecting reservations and purchasing tickets for the officers of the company from Raichur to various places and also for such other matters and that there was no case of misappropriation or criminal breach of trust committed by him. In my view, the mere fact that Ramamurthy had not written the books of accounts upto-date and as on the date of Ex. W-2, he was not able to produce the relevant vouchers will not irresistibly lead to a conclusion that he had committed any criminal breach of trust or he had misappropriated any amount of the company.

42. WW-1 the workman has not stated anything material as regards the case of the said Ramamurthy. WW-2 Vali Babu states that Ramamurthy had misused sum of Rs. 40,000/- and after adjusting certain amounts, a sum of Rs. 15,900/- was found due from him, that P.F. loan was sanctioned to him, and the said amount was adjusted and that he has been still retained in service. Paras 17 to 20 of the evidence of WW-2 show that he has no personal knowledge regarding the alleged misappropriation of certain amounts of the company by Ramamurthy. On going through the evidence of MW-7 Prithviraj, Ex. W-2 on the one hand and the evidence of WW-2 on the other, I find that the evidence of MW-7 Prithviraj finds support from Ex. W-2 and that it requires to be preferred. It has not been established that the management has committed any act of discrimination or has indulged in any unfair labour practice in condoning any alleged act of misconduct of Ramamurthy or in victimising the I party workman. The I party workman has a case that in 1981 when he was in hospital for 21 days, the management had terminated his services and that he had

raised a dispute and a reference was made, but the management failed in that case and had to reinstate him with some consequential benefits. It is further alleged by him that the management had a grudge against him in that connection and added to that he was a member of the Executive Committee of the union and that the management did not like him and therefore he has been victimised. In para 64 of his evidence, WW-1 states that there were 24 executive committee members in 1980 and all the 24 members of the executive committee had been chargesheeted by the management. WW-2 Vali Babu his own witness contradicts him in that regard. In para 13 of his evidence WW-2 states that against none of 9 office bearers and against none of 64 executive committee members the management had issued any chargesheet and taken any disciplinary action. The evidence of WW-1 Sharanappa and WW-2 Vali Babu does not prove that the management had any vindictive attitude against the workman for his trade union activities. It is an admitted fact that on one occasion the I party workman and some other members of the security staff had detected a theft case and in that connection the I party workman and some others have been awarded some cash of Rs. 200/- Ex. W-1 dated 15-4-85 shows that a cash award of Rs. 200/- was awarded to each of the I party Sharanappa Syed Kaja, Havildar and Mohiuddin. It is an admitted fact that the said award was given to him in 1985, after he was taken back to service in 1984. In para 61 of his evidence, WW-1 concedes that the said reference was not decided on merits but it was settled before R.T.C. and that he accepted only 60 per cent of back wages and got reinstated. In my view, the fact that in 1985 he has been awarded a cash of Rs. 200/- for his some good work belies the contention of the I party workman that the management had any discriminative attitude against him and was bent upon victimising him under some garb. In the light of the principles laid down in the aforesaid authorities, when the facts as analysed above examined, it emerges that the I party workman has not established that the management has discriminated against him in imposing the punishment of dismissal or that it has indulged in any unfair labour practice.

43. The I party workman was working in the security department. The II party company is operating a gold mine. There cannot be two opinions that an employee of the Security Department working in a gold mine is expected to exhibit all the honesty, integrity and sincerity. The management has established that he has betrayed the confidence reposed in him by it. The provisions of standing order Nos. 15(a) 15 (n) and 15(z) show that he was guilty of fraud and dishonesty in connection with the company's business, that he had committed breach of the rules in relation to the medical reimbursement scheme and that his such conduct was prima facie detrimental to the interest of the company. Under such circumstances, it cannot be said that the punishment of dismissal is shockingly disproportionate to the acts of misconduct committed by him.

44. The learned counsel for the I party referred to the case of South Kujama Colliery Vs. Central Government Industrial Tribunal Dhanbad and another (1967 II LJ page 193). The facts of the reported case would show that in the case of some watchman who was found sleeping while on duty the management had let him off with a warning whereas in the case of the I party workman he had been dismissed from service and under such circumstances, it has been laid down that the award passed by the Tribunal that the punishment was excessive and discriminatory was sustainable. The facts as scrutinised by me of the present case are entirely different and no case of discrimination has been made out. The principle laid down in the authority is not attracted.

45. The learned counsel for the I party has then referred to the case of Shankar Doss Vs. Union of India (1985 I LJ page 184). The authority is on the point that the right to impose penalty implies a duty to act justly. The evidence of MW-2 G. D. Deshpande, General Manager shows that after he received the report of the Enquiry Officer in 1986, he studied the proceedings, went through the report carefully and then arrived at a conclusion that it was a fit case for dismissal. It has been already observed as to how second opportunity was given to the workman and only thereafter the order of dismissal was passed. The documents at Exs. M-16, M-17 and

M-18 support the evidence of MW-2 in that connection. The order of dismissal Ex. M-19 itself discloses that the disciplinary authority had gone through his service record and did not find any extenuating factors and considered it proper to impose the punishment of dismissal. He has assigned reasons that the misconduct committed by him is of grave nature and since there are no extenuating or mitigating factors, he found it fit to impose the punishment of dismissal. This Tribunal while dealing with the present reference is exercising jurisdiction under Section 11A also and even if there is any irregularity in passing the punishment of dismissal, the I party workman had all the opportunity and liberty to show that the punishment of dismissal was not proper. On close analysis of the facts and circumstances of the case, I find that the punishment of dismissal is reasonable and proper. The I party workman is thus not entitled to any relief.

46. In the result an award is passed to the effect that the management of Hutti Gold Mines Co. Ltd. was justified in dismissing Sri Sharanappa, watchman, Security Department with effect from 13-2-1986 from service of the Company and that he is not entitled to any relief.

(Dictated to the stenographer, taken down by her, got typed and corrected by me.)

B. N. LALGE, Presiding Officer

[No. L-43012/8/86-D. III (B)]

का. आ. 623.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्वयंसेवी आयरन माइन, मैसर्स टिस्को लिमिटेड के प्रबन्धन से सम्बद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, संख्या -2, धनबाद के पंचवट को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-3-89 को प्राप्त हुआ था।

S.O. 623.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Dhanbad No. 2, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Noamundi Iron Mine, M/s. TISCO Ltd. and their workmen, which was received by the Central Government on the 7-3-1989.

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

Reference No. 347 of 1986

In the matter of an industrial dispute under Section 10(1)(d) of the I. D. Act, 1947

#### PARTIES :

Employers in relation to the management of Noamundi Iron Mine, M/s. TISCO Ltd., At and P.O. Noamundi, Distt. Singhbhum (Bihar) and their workmen.

#### APPEARANCES :

On behalf of the workmen—Shri Samiran Paul, Advocate.

On behalf of the employers—Shri B. Joshi, Advocate.

STATE : Bihar

INDUSTRY : Coal

Dhanbad, the 28th February, 1989

#### AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I. D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-26012/2/86-D.III (B) dated the 23rd October, 1986.

786 GI/89—8

#### SCHEDULE

"Whether the Management of Noamundi Iron Mine of M/s. TISCO Ltd., Noamundi is justified in terminating the services of Shri Mantoo Ghosh P. No. 92682 Chargehand with effect from 12-7-84 ? If not to what relief the workman is entitled ?"

The case of the management is that the concerned person Shri Mantoo Ghosh was working as a Chargehand in Noamundi Iron Ore Mines of M/s. TISCO. He was performing the duties of supervision on the date of his dismissal on 12-7-84. He was getting a salary of more than Rs. 1600 per month at that time and therefore he was not a "workman" within the definition of Section 2(s) of the I. D. Act on the date of his dismissal from service. As such the concerned workman has no right to raise an industrial dispute within the meaning of Section 2(a) of the I. D. Act. The present reference does not arise out of any industrial dispute and as such this Tribunal has no jurisdiction to decide the matter referred before it for adjudication.

The concerned person was required to exercise proper control over all the technical, skilled and unskilled workmen deputed to run, maintain and look after machineries plant and equipment installed within the part of the mine under his charge. He was required to supervise the work of all such persons, to give necessary direction with a view to ensuring smooth working and maintenance of plants and machineries and equipment. He was required to distribute work in all such workmen under his charge on day to day basis, to receive reports from the persons operating the machineries in relation to the condition of machineries and to depute competent persons to carry on urgent repair and maintenance jobs to make around and to make inspection to see that the instructions given by him had been understood by the competent persons and that they were attending the breakdown and maintenance jobs skillfully. He had the power to send a workman out of the mine, if such workman did not carry out his instruction or otherwise committed misconduct while on duty, and to submit a complaint against such person for taking disciplinary action including dismissal from services. He was to see that the operators of machine and the competent persons reported for duties in time and the persons of the previous shifts were relieved without undue delay so that overtime wages were not claimed by the previous shift men. He had to equally arrange for a substitute in place of absentee. He was in charge of OL-1 junction of overline and conveyor system of the mine where 3 Plow feeders, 2 conveyors along with Switches and equipment have been installed.

On 11-7-83 the concerned person was on duty as chargehand in respect of OL-1 part of the mines in the first shift of OL-1 part of the mine in the first shift commencing from 7 A.M. and ending at 3 P.M. with a break of 1/2 hour from 12 noon to 12.30 P.M. In the capacity of chargehand the concerned person requisitioned for 5 Litres of gear oil HP-90 from bottom bin in the morning of 11-7-83 for the use of the gear boxes of the Plow feeder situated at OL-1 junction. He received the required quantity of gear oil on the same day during his duty hours but he did not use the said gear oil in the relevant gear boxes but wrote an entry in the log book to the effect "TMB Gear Oil fill in the size and fines" and took away the gear oil himself in a container on his Motor Cycle for his personal use/gain. Thus the concerned workman committed serious misconduct of dishonesty in connection with the company's business by adopting ingenious and dubious means with the hope that the same would not be detected by the management. On 12-7-83 the concerned person remained on weekly day of rest, Shri G. S. Sahay, Asstt. Engineer, Incharge of the Area comprising over load conveyor and bottom Bin made inspection on 12-7-82 and detected that the log book entry regarding the use of gear oil made by Shri Mantoo Ghosh was wrong. He made some preliminary enquiry to find out if the 5 litre of gear oil H.P. received by the concerned person from Bottom bin was at all used or it was stolen away by any workman due to neglect conduct on the part of the concerned person. Thereafter a chargesheet dated 20-7-83 was issued to the concerned person asking him to explain for causing loss of 5 Litre of gear oil and making false entry in the log book indicating the use of the gear oil in the gearboxes. The concerned person submitted his reply dated 23-7-83 stating that the requisitioned for 5 litre of TMB gear oil at 8 A.M. on 11-7-83 and the same was received by him at 9 A.M. sent



through a truck in a tin. He explained that he asked the person working under him to pour the said oil in the gear boxes and he verified it at 3 P.M. and wrote the entry in the log book. He asserted that the oil was not missing.

Shri A. B. Singh Personnel Officer, Noamundi Mines was appointed as Enquiry Officer by letter dated 11-8-83. The departmental enquiry was held in presence of the concerned workman and the enquiry was closed on 2-11-83. Shri A. B. Singh, Enquiry Officer submitted his enquiry report dated 30-11-83 holding that the concerned person took away 5 litres of gear oil himself and thereby committed misconduct and dishonesty in connection with the company's business. After perusing the said enquiry proceeding, the enquiry report and other relevant papers relating to the chargesheet dated 20-7-83, the Manager of the Mine issued another chargesheet dated 9-12-83 against the concerned person alleging that he requisitioned 5 litres of gear oil for use in the gear boxes at OT-1 junction and after receipt of the same took away the oil surreptitiously from the company's premises without consent of the appropriate authority. He was charged for commission of misconduct of dishonesty in connection with the company's property. The concerned person submitted his reply dated 18-12-83 denying the allegation and taking a plea that the second chargesheet had been issued to him with an idea of victimisation on account of personal grudge. Shri G. A. Nazim Asstt. Chief Personnel Manager was appointed as enquiry officer by letter dated 15-5-83 to conduct the departmental enquiry into the chargesheet dated 9-12-83. The enquiry was held on 30-5-84, 1-6-84 and 4-6-84 and thereafter the enquiry was closed. The Enquiry Officer submitted his report dated 28-6-84 holding the concerned person guilty of the misconduct and dishonesty in connection with the company's property. As the concerned person committed serious misconduct of dishonesty in connection with company's property he was dismissed from service by order dated 11-7-84 passed by the Divisional Manager (Mine). There was no extenuating ground to consider for imposition of punishment other than dismissal.

Both the departmental enquiries conducted against the concerned person were conducted in his presence. The concerned person was permitted to be assisted by co-employee to fully cross-examine the management's witnesses, to examine witnesses and to give his own statement. The enquiries were conducted in accordance with the principles of natural justice. First enquiry was the basis for framing the chargesheet in respect of the second chargesheet dated 9-12-83. The enquiry proceeding and the enquiry report of the first enquiry were marked as exhibit in the second departmental enquiry and the Enquiry Officer Shri A. B. Singh was examined as a witness in the second enquiry. The concerned person was permitted to call all or any of the persons examined in the first departmental enquiry for further examination or cross-examination and to examine any new witness which he desired. He was also asked to produce further documents in his favour if he so desired. The management submitted a list of witnesses and the documents which has been marked. The concerned person intended to examine S/Shri Sona Ram, Nageshwar, D. D. Ghosh and G. C. Bhowmik who had already been examined and cross-examined in the first departmental enquiry. The Enquiry Officer permitted the concerned person to examine or cross-examine them. The concerned person did not examine all of them but examined only one person named Sonaram. He examined a fresh witness Shri Jagdish Jha. The concerned person had been provided with the photostat copy of the relevant documents of the previous departmental enquiry before examination of witnesses before Shri Nazim. The concerned person never objected to the procedure of the enquiry or made any complaint against the Enquiry Officer. The enquiry was fair, proper. The enquiry report is based on the materials placed before the Enquiry Officer. The action of the management in dismissing the concerned person is legal and bonafide and justified and the concerned person is not entitled to any relief.

The case of the concerned workman is that he was not a supervisor and the nature of duties performed by him were neither supervisory nor managerial. He was working as a chargehand who had to perform the job himself with his own hands. He had to maintain all sorts of equipment and had to do idle fitting conveyor shifts repairing traffic idle changing, modification job, suit liner changing, gear oil filling, machine repairing gear repairing pump repairing etc. The concerned

workman was required to take advice if necessary from the Foreman or Asstt. Engineer for doing all such jobs. He is a workman under section 2(s) of the I. D. Act and he had been treated as such under the Wage Board agreement and the management took action against him under the certified standing orders applicable to a workman. The plea of the management that the concerned person is not a workman cannot be sustained. He was not required to exercise control over technical skilled and unskilled workmen nor he was required to supervise their work or to give directions to them. He was not required to distribute work to the workmen and he had not duty to receive reports from the machine operators. He had no power to send any workman out of the mine area or to complain against any workman for taking disciplinary action.

A chargesheet dated 20-7-83 was served upon the concerned person which related to an occurrence alleged to have taken place on 11-7-83. The concerned person submitted an explanation to the chargesheet stating that on 11-7-83 at about 8 A.M. he was asked by the Asstt. Engineer bottom bin to change gear oil and hence requested the control room to send about 5 litres of TMB gear oil at about 9 A.M. The oil in a tin was sent in a truck. The concerned person asked to pour the oil and he checked all the gear boxes at about 3 P.M. and found that the gear oil was full. He also found that the oil sent from the bottom bin was kept near the general locker and then the concerned person was confused whether it was the same oil which he had ordered or it was a different oil and as such he kept it inside the locker for safe custody. The said oil was not missing and was still in the locker. The management did not accept the explanation and got perfunctory enquiry conducted against him. A report was submitted with the finding that the misconduct committed by the concerned person did not amount to neglect of his work but amounted dishonesty in connection with company's property. The Enquiry Officer Shri A. B. Singh was asked to enquire into the charge as specified in the chargesheet and he had no business to find out whether any other misconduct had been committed by the concerned person. The management having failed in their attempt to prove charge of neglect against the concerned person, another chargesheet dated 9-12-83 was served upon the concerned workman making a new allegation of removing the gear oil from the company's premises without the knowledge and consent of the authorities. The concerned person denied the charge levelled against him and stated that it was purely by way of victimisation on account of personal grudge. In the second enquiry before Shri G. A. Nazim none of the employees of M/s. Tisco. Ltd. supported the allegation levelled against the concerned workman. The management brought an outsider witness namely Shri Kuni Patra a labourer working under a contractor by tutoring her to give statement against the concerned person. She falsely stated that the concerned person poured some oil in a tin and carried by his motor cycle. She did not state which oil, or what type of oil or what quantity of oil was poured by the concerned workman. She did not see the concerned person and his motor cycle. She being an illiterate labourer was not in a position to read number of the Motor bike as re-ordered in her evidence. In spite of lacunae a perverse report based on no evidence was submitted against the concerned person holding him guilty of dishonesty. The Divisional Manager had no jurisdiction to pass order of dismissal or to act as disciplinary authority. The order of dismissal of the concerned person from service is illegal and not tenable in law. Although a new enquiry was held for the new charge Smt. Kuni was examined in the first enquiry proceeding. She was not produced and examined in the second enquiry proceeding before Shri Nazim but even then the Enquiry Officer has based his findings on the evidence of Smt. Kuni Patra. There is no evidence to show that oil was received by the concerned person. The persons who received the oil were not examined by the management who could have been the best witnesses to tell as to what happened to the oil received from bottom bin. It was for the management to establish all these facts and the onus did not lie on the concerned person. Nothing was detected at the gate by the guards on duty of the company's premises. There was no reason to believe as to why the guards will allow the concerned person to go out of the gate without any gate pass. The order of dismissal of the concerned person is unlawful by way of victimisation based on perverse report of the Enquiry Officer. The punishment imposed upon the concerned workman is too harsh and dis-

proportionate with the gravity of the alleged misconduct. On the above facts it has been prayed that it may be held that the management is not justified in terminating the services of the concerned person and that he may be reinstated with all dues from the date of his dismissal.

As it was a question of dismissal of the concerned person after holding enquiry into the charges levelled against him on the request of the parties the Tribunal heard on the preliminary point whether the enquiry was fair and proper and in accordance with the principles of natural justice. By the order dated 2-11-87 the Tribunal held that the enquiry proceeding held into the charges against the concerned workman was fair, proper and in accordance with the principles of natural justice.

A petition was filed on behalf of the management that as there is question of jurisdiction involved in this case he would lead evidence to the effect that the concerned person was not a workman within the meaning of Section 2(s) of the I. D. Act. After hearing the parties the Tribunal allowed the parties to lead evidence on the point whether the concerned person was a workman within the meaning of Section 2(s) of the I. D. Act as it involved question of jurisdiction of the Tribunal. Both the parties led evidence and thereafter the enquiry case was heard on the point whether the concerned person was a workman within the meaning of Section 2(s) of the I. D. Act and whether the management had established the charge against the concerned person before the Enquiry Officer.

Now the points for determination in this reference are (1) whether the concerned person is a workman within the meaning of Section 2(s) of the I. D. Act, (2) whether the charge against the concerned person has been established on the materials produced before the Enquiry Officer and (3) whether the punishment of dismissal of the concerned person was disproportionate to the gravity of the alleged misconduct.

The management examined two witnesses and the concerned workman examined himself on the point whether the concerned person was a workman within the definition of Section 2(s) of the I. D. Act. The management placed all the relevant papers regarding the enquiry proceeding and they are marked Ext. M-1 to M-11 in the case. No document has been marked as exhibit on behalf of the concerned workman.

A controversy has been raised on behalf of the management that the concerned person is not a workman as defined under Section 2(s) of the I. D. Act and as such the case of the concerned person is not an industrial dispute and accordingly this Tribunal has no jurisdiction to decide the points referred to in the Schedule to the order of reference. "Workman" under Section 2(s) of the I. D. Act means any person employed in any industry to do any skilled or unskilled manual supervisory technical or clerical work for hire or reward but it does not include such person who, being employed in a supervisory capacity, draws wages exceeding Rs. 1600 per month or exercise, either by the nature of the duties attached to the office or by reasons of the powers vested in him functions mainly of managerial nature. An Industrial Dispute u/s. 2(k) of the I. D. Act means any dispute or difference between employers and workmen which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person. (Irrelevant portions of the definition has been left out). Admittedly the concerned person is drawing wages exceeding Rs. 1600 per month. It is submitted on behalf of the management that the concerned workman is employed in a supervisory capacity drawing wages exceeding Rs. 1600 per month and hence his case will not be covered under the definition of workman. The concerned workman is admittedly working as chargehand. Both the parties have led evidence in support of their respective case. MW-2 is working as chargehand in Noamundi Iron Ore Mines. He has stated about the work being performed by chargehand. From his evidence it will appear that as chargehand he has supervised the work of the workmen and thus he has tried to show by his evidence that a chargehand is a supervisor. He has also stated that in OL-1 junction there are machineries namely 2 belt conveyors and 3 plow feeders besides other machines to operate conveyors and plow feeders. He has

further stated that Fitter-cum-Operators operate and repair the conveyor and plow feeders and as chargehand he used to look after and supervise their work. He has stated that a chargehand distribute work to the workmen and goes for inspection and points out the defect in the machinery and gets it repaired. In cross-examination he has stated that no letter has been issued by the management regarding the work which has to be done by a chargehand. He has stated that the chargehand repairs, counter shafts, pumps compressor OH Crane, workshop machines, alignment and level of machine in other department of Noamundi Iron Ore Mine but those machines are not installed in OL-1 junction. He has stated that as chargehand he gets Rs. 2300 per month. He has stated that he is a member of Noamundi Mazdoor Union and the union takes up the matter in connection with the chargehand in the meeting between the union and the management. Towards the close of his evidence he has stated that a chargehand has sometimes to do some work by his own hands. It appears therefore from his evidence that a chargehand himself does manual labour by repairing the machines themselves in the mines and other place except OL-1 junction and that even at OL-1 junction a chargehand has sometime to do some work by his own hands. The case of the concerned person is further supported by the evidence of the management's witnesses and MW-2 itself. Presently MW-3 is working as Asstt. Engineer but he had remained in-charge of OL-1 junction during 1982 to 1986 in the capacity of Asstt. Engineer. He had worked as chargehand also in different section. In his cross-examination-in-chief he has stated that a chargehand supervised the work and is not required to do it himself. He has also stated about the different work being performed by a chargehand as stated by MW-2. According to him the chargehand in the Central workshop do the jobs themselves when required. He has also stated that incidentally the concerned person as well as the Foreman, Asstt. Engineer or Engineer have to do the jobs themselves. He has stated in his cross-examination that he has seen the job description of the chargehand, Foreman, Asstt. Engineer and Engineer but he does not remember the name of the book in which these jobs are stated. He has also stated that the said book is available in their personnel department but the management has not produced any such book to show that the specific duties which are to be performed by a chargehand. In further cross-examination he has stated that as chargehand he used to do the job himself when required. He further stated that he was liable to explain if the job was not done personally by him. He has stated that a chargehand has first to try to rectify the defects personally and if he is not able to rectify it he has to inform the Engineer. He has stated that the chargehand is liable for maintenance of the equipment and when posted in conveyor belt system he has to do idler fitting. It is thus clear from the evidence of MW-3 that a chargehand has also to do the jobs with his own hands and if he does not perform the job he is liable to be held responsible for it. WW-1 is the concerned person. He has stated that the job of chargehand is not supervisory. He has stated that the chargehand work with their own hands and they repair idler, idler fitting impact idler fitting pump repair, gear box repairing, suit liner changing and repairing etc. He has stated that he had no power to grant leave or to issue chargesheet against any workman. He has stated that there was 3 plow feeders, one pump, one suit and belt conveyor, traffic idler forming part of belt conveyor. He has further stated that when there is any defect in the machine the chargehand first try to repair it and if they do not succeed in repairing the matter is informed to the Foreman. In para-3 of the W.S. of the management it is stated that the concerned person was in-charge of OL-1 junction and overlaid conveyor system of the mine where 2 plow feeders, 2 conveyor along with Switches and equipment have been installed. It is thus clear that OL-1 junction of the conveyor system where the concerned person was working had machineries has stated in para-3 of the W.S. of the management. The evidence adduced on behalf of the management itself shows that a chargehand has to repair and maintains machineries of OL-1 junction with their own hands. There are some other works also done by the concerned person but they cannot be said to be supervisor in the sense that the chargehand was the supervisor of the other workmen working and operating the machine. There were other superior officers as Foreman, Asstt. Engineer, Engineer Etc. under whom the chargehand works. Considering the entire evidence it appears that the job of chargehand in OL-1 junction is the job of a workman within the definition of Section 2(s) of the I.D. Act. Accordingly I

hold that the concerned person Shri Mantu Ghosh is a workman within the meaning of Section 2(s) of the I. D. Act.

#### Point No. 2

I have stated the facts of the case in details and in stating the case of the parties I have also stated the procedure of the domestic enquiry adopted in the case of the concerned workman. I would again just repeat the procedure to make the points more clear. It will appear that the concerned person was first chargesheeted vide Ext. M-2 dated 20-7-83 in which it is alleged that he had received 5 litres Saivo Gear HP-90 oil from bottom bin for company's use at OL-I junction on 11-7-83 and on investigation it was found that he had neither ensured its use nor its safe custody as a result of which the oil was found missing from the premises of OL-I junction. It was further revealed that the concerned workman did not verify the use of the said oil and made an incorrect entry in the log book that TMB Gear oil was full in size and fines and thereafter he was charged for neglect of his work under clause 34 sub-clause IX of the company's Certified Standing Orders. After the concerned workman had filed his reply to the chargesheet the management was not satisfied with the explanation and a departmental enquiry was ordered. During the said enquiry 9 witnesses were examined on behalf of the management and 4 witnesses were examined on behalf of the concerned workman besides the concerned workman himself. Ext. M-3 is the enquiry report dated 30-11-83 by the Enquiry Officer Shri S. B. Singh. The Enquiry Officer in his enquiry report was of the opinion that the misconduct committed by the concerned workman did not amount to neglect of his work but it amounted to dishonesty in connection with company's property. Thereafter the management on the basis of the said enquiry report framed another chargesheet Ext. M-4 dated 9-12-83 against the concerned workman. It was stated in the said chargesheet Ext. M-4 that from the domestic enquiry conducted into the said chargesheet it has been revealed that instead of using the 90 H.P. Gear oil in the gear box he removed the same from the company's premises without the knowledge and consent of the appropriate authority and as such his act amounts to dishonesty in connection with the company's property. The concerned workman in his reply to the said chargesheet stated that due to personal grudge to victimise him the said charge was brought against him.

After the chargesheet Ext. M-4 the management examined Shri A. B. Singh Enquiry Officer who conducted the domestic Enquiry into the charges framed in Ext. M-2 against the concerned workman. The management also examined Shri G. S. Sahay Asstt. Engineer. The management also submitted the papers regarding the first enquiry before the Enquiry Officer Shri G. A. Nazim who had conducted the domestic enquiry into the charges as stated in Ext. M-4 dated 9-12-83. The concerned workman besides himself examined Shri Sonaram and Shri Jagdish Jha. The Enquiry Officer Shri Nazim placed reliance on the evidence adduced before the first enquiry officer Shri A. B. Singh. It appears from the proceeding of the second enquiry that the enquiry officer Shri Nazim had asked the concerned workman to call for any of the management's witnesses who had been examined earlier during the first domestic enquiry against him and had also asked the concerned workman to adduce his further witness in his defence if he so liked. The concerned workman submitted in writing that out of the witnesses examined before Shri A. B. Singh he would only cross-examine Sonaram and thereafter he further examined Shri Jagdish Jha in his defence.

The allegation against the concerned workman was that he had removed 90 H. P. Gear Oil requisitioned by him on 11-7-83 with a dishonest intention. I have looked into the entire evidence and the witnesses examined during the first domestic enquiry by Shri A. B. Singh, Enquiry Officer and the second domestic enquiry held by Shri Nazim and I have found that there was only one witness who claims and have seen the concerned workman appropriating the HP Gear oil requisitioned and received at OL-I junction. The other witnesses examined on behalf of the management had not actually seen the concerned workman removing the oil and they are on facts other than the removal of gear oil by the concerned workman. The witness whose evidence is relied upon by the management is Smt. Kuni Patra a contractor's labour who was working on 11-7-83 during the

first shift at OL-I junction tunnel, for clearing the spilege. She has stated that when she was working in the tunnel the electric power went off and the tunnel became dark and as such he came out of the tunnel around 11.45 A.M. and saw the concerned workman Shri Mantu Ghosh pouring oil from a tin near the general locker into a tin of 5 litre. She further stated that thereafter the concerned workman kept the filled tin in his Motor cycle No. ORJ-2702 and left the empty tin in the general locker and thereafter the concerned workman went away on his Motor cycle. In cross-examination she has stated that she had seen the concerned workman pouring the oil but she did not know what oil it was. She has also stated that there was no other person at the time when she had seen the concerned person pouring the oil. There is no doubt that there is a witness to the fact that the concerned workman was seen pouring oil from one tin into another tin of 5 litres and keeping the empty tin in the general locker. Now her evidence has to be judged from the evidence of other witness. Shri G. S. Sahay was the person who on 12-7-83 had made a preliminary investigation on suspicion that all requisitioned from the bottom bin had not been used in the gear box. His evidence will show that about 1-1/2 to 2 litres of oil were found from the general locker. According to Kuni Patra the concerned workman had poured the oil in a tin of 5 litre and had left the empty tin in the general locker but according to Shri Sahay about 1-1/2 to 2 litres of oil were found in the tin near the general locker. The other factor is that from the evidence of Smt. Patra it appears that the concerned workman had poured the oil in a tin of 5 litres and had carried it away. There is no person except Smt. Patra who had seen the concerned workman carrying tin of 5 litres on his Motor bike. The concerned workman has examined Shri Jagdish Jha who stated that he had accompanied the concerned workman on his Motor bike from OL-I junction to the children's school to fetch their children. The said Jagdish Jha has not stated that he had seen any tin of 5 litres being carried by the concerned workman on his Motor cycle. The first chargesheet against the concerned workman had been submitted on the basis of some preliminary enquiries made by Shri Sahay and there is no evidence to the effect that at that time Smt. Patra had told him that she had seen the concerned workman pouring the HP Oil in a tin of 5 litres and taking it away on his Motor cycle. If she had stated so to Shri Sahay the concerned workman would have been charged not for negligence of his duty but directly for the misconduct of dishonesty. It is clear therefore that at the time of preliminary enquiry by Shri Sahay no one had stated that the concerned workman was seen taking away gear oil which had been requisitioned by him from bottom bin. Although no witness has turned upto say that he had poured the gear oil in the gear boxes after the gear oil was received from bottom bin but it appears from the evidence of the concerned workman that the gear boxes were full with gear oil. There is no other witnesses who had seen the gear box and to deny the fact that the gear box was not full with oil. The concerned workman himself has stated in his explanation to the first chargesheet that on 11-7-83 at 8 A.M. he requisitioned 5 litres of T.M.B. gear oil from the bottom bin control room and that at about 9 A.M. the same oil in a tin was sent to OL-I from bottom bin in a truck. He further stated that he told them to pour the oil in a tin which was kept by the side of the general locker. He further stated that at about 3 P.M. he went to check the position of all the gear boxes and he found that the gear boxes were full and he became sure that oil sent from the bottom bin was poured in the gear boxes. He further stated that he was confused when he saw the oil sent from bottom bin was kept near the general locker and then he kept it inside the locker in the safe custody and he made a note in the log book that "gear oil was full in size and fines." It will thus appear from the explanation of the concerned workman given in Ext. M-2 that he had himself seen some oil near the general locker which had been sent from bottom bin and was confused. If we consider this statement of the concerned workman it tallies with the evidence of Shri Sahay that some oil was found in the tin near the general locker. The concerned workman has admitted that he himself had not poured the oil in the gear box and he also cannot name the persons who had poured the oil in the gear boxes but from the fact that the gear boxes were found to be full with oil and there was still some oil left in the tin shows that after filling the gear box some oil was left which remained in the tin which was subsequently kept by the concerned workman in the general locker and

was found by Shri Sahay on 12-7-83. The evidence of Smt. Patra does not appear to be corresponding with the evidence of Shri Sahay and the statement of the concerned workman. The evidence of Smt. Patra is therefore without any corroboration by any witness or circumstances and is not such a piece of evidence so as to conclusively hold that the concerned workman had actually removed the oil received from the bottom bin. In the above view of the matter I hold that the charge of misconduct of dishonesty by removal of the gear oil by the concerned workman has not been established with cogent evidence. Accordingly I hold that the charge as alleged in the chargesheet Ext. M-4 was not established in the domestic enquiry on the materials produced before it.

In the result, I hold that the management of Noamundi Iron Ore Mines of M/s. Tisco Ltd. of Noamundi is not justified in terminating the services of the concerned workman Shri Mantu Ghosh charged with effect from 12-7-84 and accordingly the order of his dismissal is set aside and the management is directed to reinstate him to his original job with effect from 12-7-84 with full back wages and other benefits for which he is entitled. The management is directed to reinstate the concerned workman and pay him the back wages within 2 months of the date of publication of the Award.

This is my Award.

I. N. SINHA, Presiding Officer  
[No. I-26012/2/86-D. III(B)]

का. आ. 624.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार साहिबगंज के राजमहल क्षेत्र की सिलिका रेत एण्ड चार्ज, के माहल के प्रबन्धकों से सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निश्चित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक प्रतिक्रिया, धनबाद नं. 1 के पंचांग को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-3-89 को प्राप्त हुआ था।

S.O. 624.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Dhanbad No. 1 as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Silica Sand and China Clay Mines of Rajmahal Area, Sahibganj and their workmen, which was received by the Central Government on the 3-3-1989.

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD

In the matter of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947.

Reference No. 132 of 1988

#### PARTIES :

Employers in relation to the management of Silica sand and China Clay mines of Rajmahal Area, Sahibganj.

#### AND

Their Workmen

#### APPEARANCES :

For the Employers—Shri R. A. Chamaria, Advocate.

For the Workman—None.

STATE : Bihar.

INDUSTRY : Coal

Dated, the 20th February, 1989

#### AWARD

By Order No. L-29011/24/88-D.III(B) dated 27-9-1988, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1)

of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

“Whether the action of the owners/employers of China Clay mines of the Rajmahal area namely M/s. Saidpur Bujrug China Clay Mines, Rajmahal (Sahibganj), (2) M/s. Jaigovind Dutta, Rajmahal (Sahibganj), (3) M/s. Suraj Mineral Industry, Rajmahal (Sahibganj) and (4) M/s. Jain China Clay Mines, Rajmahal (Sahibganj) in not paying bonus at the rate of 20% as demanded by the workmen represented by M/s. Mangalhat Mazdoor Khadan Sangh & M/s. Khadan Mazdoor Sangh is justified? If not, what relief the workmen are entitled to?”

2. It appears from the schedule of the terms of reference in the present case that consequent upon the demand of the workman of China Clay mines of the Rajmahal area, namely, (1) M/s. Saidpur Bujrug China Clay Mines, Rajmahal (Sahibganj), (2) M/s. Jaigovind Dutta, Rajmahal (Sahibganj), (3) M/s. Suraj Mineral Industry, Rajmahal (Sahibganj) and (4) M/s. Jain China Clay Mines, Rajmahal (Sahibganj) for bonus at the rate of 20%, the present dispute has arisen. Neither the General Secretary, Mangalhat Khadan Mazdoor Sangh, Rajmahal (Sahibganj) nor the President, Khadan Mazdoor Sangh, Naya Tola Maharajpur (Sahibganj) nor the workmen presented themselves before this Tribunal in order to support the demand of the workmen with any evidence.

3. Anyway, it appears from the schedule of the terms of reference that the workmen of China Clay Mines of the Rajmahal Area, namely, (1) M/s. Saidpur Bujrug China Clay Mines, Rajmahal (Sahibganj), (2) M/s. Jaigovind Dutta, Rajmahal (Sahibganj), (3) M/s. Suraj Mineral Industry, Rajmahal (Sahibganj) and (4) M/s. Jain China Clay Mines, Rajmahal (Sahibganj) represented by the General Secretary, Mangalhat Khadan Mazdoor Sangh, Rajmahal (Sahibganj) and the President, Khadan Mazdoor Sangh, Naya Tola Maharajpur (Sahibganj) pressed for bonus at the rate 20% with their employers, but that being of no avail the present reference was referred to this Tribunal for adjudication by the appropriate Government. One of the four employers, Jaigovind Dutta Rajmahal (Sahibganj) filed a petition praying for adjournment on the ground of his sickness, but disclosed at the same time that the lease for the mine expired on 10-8-1981 and that all works of the mine remained closed since 31-1-1983 and that dues had been paid to the workmen. The other employers, although notices were issued and served, did not appear.

4. The Record bears out that the General Secretary, Mangalhat Khadan Mazdoor Sangh, Rajmahal (Sahibganj) and the President, Khadan Mazdoor Sangh, Naya Tola Maharajpur (Sahibganj) have not come up before this Tribunal with statements of claims complete with relevant documents etc. Thereupon notices were issued to the General Secretary, Mangalhat Khadan Mazdoor Sangh, Rajmahal (Sahibganj) and the President, Khadan Mazdoor Sangh, Naya Tola Maharajpur (Sahibganj) calling upon them to appear on 20-1-89 and 20-2-1989 and to file their statements of claims. But nothing has come out of these notices.

5. When the case is called on for hearing today, Shri R. A. Chamaria appears for the management of M/s. Jaigovind Dutta Rajmahal and Saidpur Bujrug China Clay Mines, Rajmahal (Sahibganj). Neither the unions nor the concerned workmen have appeared nor have they filed any written statement in spite of service of notices upon them, the last one being on 16-1-1989. In the circumstances, I have reason to believe that neither the unions nor the concerned workmen are interested in proceeding with the present reference. Hence, this Tribunal has got no other alternative then to pass a “no dispute award” and accordingly I do so.

This is my award.

S. K. MITRA, Presiding Officer  
[No. L-29011/24/88-D.III(B)]

V. K. SHARMA, Desk Officer

नई दिल्ली, 6 मार्च, 1989

का. मा. 625.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार देवी पाटन ग्रामीण बैंक मोडा के प्रबन्धतंत्र से संबद्ध नियोक्तों और उनके कर्मचारियों के बीच, अनुबन्ध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, तथा न्यायालय कानपुर के पंचद को प्रकाशित करती है।

New Delhi, the 6th March, 1989

S.O. 625.—In pursuance of section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Cum-Labour Court, Kanpur, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Devi Patan Kshetriya Gramin Bank Gonda and their workmen.

### ANNEXURE

BEFORE SHRI ARJAN DEV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-  
CUM-LABOUR COURT, PANDU NAGAR.

Industrial Dispute No. 133 of 1987

In the matter of dispute

BETWEEN

Shri Hemendra Kumar Singh  
C/o Shri R. K. Pande, 67/99  
Lalkuan Lucknow.

AND

The Chairman,  
Devi Patan Gramin Bank,  
Head Office 346 Malviya Nagar  
Gonda.

### AWARD

1. The Central Government, Ministry of Labour, vide its notification No. L-12012/536/86-D.II.A/D-IV-A dated 31st August, 1987, has referred the following dispute for adjudication to this Tribunal :

Whether the action of the management of Debi Patan Kshetriya Gramin Bank, Gonda in terminating the services of Shri Hemendra Kumar Singh, Ex-Senior Clerk-cum-Cashier w.e.f. 17-6-82 is legal and justified? If not, to what relief the workman concerned is entitled?

2. The workman's case in brief is that he was appointed as Sr. Clerk cum Cashier w.e.f. 14-10-81 for a period of 30 days by means of appointment letter dt. 14-10-81, copy annexure I in the Debi Patan Kshetriya Gramin Bank, Gonda (hereinafter referred to as bank) for the sake of convenience, as a temporary employee against the vacancy of permanent nature. Thereafter, his term was extended by 60 days, 60 days 15 days, 30 days, 30 days, and 15 days by means of appointment orders dt. 14-11-81, copy annexure II, dt. 11-1-82 copy annexure III, dt. 15-3-82 copy annexure IV, dt. 1-4-82 copy annexure V, dt. 27-4-82 copy annexure VI and dt. 2-6-82 copy annexure VII respectively. Thus he worked continuously from 14-10-81 to 16-6-82. He was not given any letter of termination but was simply verbally told not to resume duties from 17-6-82. He alleges that termination of his services is against rule 10.2 (A)(ii) of Banks Staff Service Regulations 1981, which provide termination of services of an employee after giving him one month's notice or one month's pay in lieu thereof. He also alleges that before terminating his services the bank management did not comply with the provisions of section 25-F read with Rules 77 & 78 of the I.D. Central Rules 1957. After the termination of his services the bank recruited further persons but he was not given opportunity in the matter of recruitment. As such the bank committed breach of provisions of section 25G & 25H I.D.

Act. The management is guilty of unfair labour practice as all along he had been employed as temporary employee against the vacancy of permanent nature. According to the workman the post on which he was appointed has not been abolished so far. He has therefore, prayed that he should be reinstated with continuity of service and back wages

3. In defence, the management admits that the workman was never appointed to fill any permanent vacancy of clerk cum cashier. He has no legal right to the regular post for which there is a prescribed procedure of written test and interview. The workman was appointed simply as temporary hand on adhoc basis pending regular recruitment without undergoing the recruitment procedure. The workman was also given an opportunity to appear in the written test held by the bank but he could not qualify in it. As such he was not eligible for appointment in regular vacancy. The management further pleads that during the period 14-10-81, to 16-6-82 the workman actually worked for 186 days but was paid wages for 228 days inclusive of Sundays and Holidays. The workman having not completed 240 days of working within a year as contemplated by section 25B I.D. Act, the question of compliance of section 25F I.D. Act does not arise. The management denies adopting of unfair labour practice and violation of the provisions of section 25G & 25H of the I.D. Act and any of the rules framed thereunder. Lastly, the management pleads that the question of retrenchment in the instant case does not arise as according to section 2(oo) I.D. Act a person appointed for a specific period is not covered by the definition of the term retrenchment.

3. In his rejoinder the workman alleges that the instant case is not covered by the amendment introduced in section 2(oo) I.D. Act as the same was introduced much after the cause of action arose in the instant case. He also alleges that the plea raised by the management regarding holding of written test carries no weight in this case. The question which arises for consideration in this case is whether his termination was made in just proper and in lawful manner or not.

4. In support of his case the workman has filed his own affidavit and in support of its case, the management has filed the affidavit of Shri Pratap Bhan Singh, General Manager, of the bank. Besides both the sides have relied upon a number of documents filed by them.

5. The main question which arises in this case is whether in terms of section 25B I.D. Act the workman had completed 240 days of service within the period of 12 months preceding the date of termination of his service. In this connection I would like to refer to some of the documents filed by the management which have been admitted by the workman's authorised representative. These documents are appointment orders dt. 14-10-81, copy Ext. M-4 dt. 14-11-81 copy Ext. M-8, dt. 11-1-82 copy Ext. M-5, dt. 19-3-82 copy ext. M-6, dt. 1-4-82 copy Ext. M-9, dt. 22-4-82 copy Ext. M-10 and dt. 2-6-82 copy Ext. M-7. By means of these orders the workman was given appointments for 30 days, 60 days, 60 days, 15 days, 30 days, 30 days and 15 days total 240 days.

6. According to section 25F in the case of such an employee workman, a workman has to be given one month's notice in writing or one month's pay in lieu thereof beside retrenchment compensation. In the instant case, there is no evidence from the side of the management to show that the workman was given any such notice or notice pay and retrenchment compensation.

7. To meet the above point, from the side of the management reliance has been placed on section 2(oo)(bb) I.D. Act. According to it the term retrenchment will not include the termination of the service of a workman as a result of non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under stipulation in that behalf contained therein. This amendment came into force on 18-8-84, i.e. much after the arising of cause of action in the present case. There is nothing to show that this amendment has retrospective effect.

7. Hence, the termination of services of the present workman cannot be held justified and it is illegal. It is, therefore, held that the action of the management of Debi Patan Kshet-

nya Gramin Bank, Gonda in terminating the services of Shri Hemendra Kumar, Singh, Ex-Senior Clerk-cum-Cashier w.e.f. 17-6-82 is not legal and justified. Consequently he is entitled to his reinstatement in service with continuity of service and full back wages, on his furnishing an affidavit to the effect that he was not gainfully employed during the period when he was out of employment of the management till the date of his reinstatement.

8. Reference is answered accordingly.

ARJAN DEV, Presiding Officer

[No. L-12012/536/86-D. II(A)|D. IV(A)]

PADMA VENKATACHARIAM, Dy. Secy.

नई दिल्ली, 9 मार्च, 1989

क्र. भा. 626—औद्योगिक विवाद अधिनियम, 1947 (1947) का 11 की धारा 17 के अनुसरण में, केन्द्रीय सरकार व भारतीय खाद्य नियम, मद्रास के प्रवर्धन के संबद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निहित औद्योगिक विवाद में औद्योगिक अधिकरण, मद्रास के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार का 28-2-89 को प्राप्त हुआ था।

New Delhi, the 9th March, 1989

S.O. 626.—In pursuance of section 17 of the Industrial Disputes Act 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Madras as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of Food Corporation of India, Madras and their workmen, which was received by the Central Government on the 28th February, 1989.

#### ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMIL NADU, MADRAS

Friday, the 3rd day of February, 1989

Industrial Dispute No. 70 of 1988

In the matter of the dispute for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 between the workmen and the Management of Food Corporation of India, Madras-6.

#### BETWEEN

The workmen represented by  
The District Secretary  
Food Corporation of India Employees Union,  
District Committee,  
Coimbatore-641012.

#### AND

The Senior Regional Manager,  
Food Corporation of India,  
Greema Road, Madras-600006

#### REFERENCE :

Order No. I-42012/66/87-D. II|B.D. IV|B. dated 4-10-88 of the Ministry of Labour, Government of India, New Delhi

This dispute coming on this day for final hearing in the presence of Thiru N. V. Balasubramanian, Advocate appearing for the Management, upon perusing the reference and

other connected papers on record and the workmen being absent, this Tribunal passed the following.

#### AWARD

This dispute between the workmen and the Management of Food Corporation of India, Coimbatore arises out of a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 by the Government of India in its Order No. 42012/66/87-D.II.B/D.IV.B. dated 4-10-1988 of the Ministry of Labour for adjudication of the following issue :

"Whether the Management of Food Corporation of India in relation to the Deputy Manager (Vigilance), Regional Office, Madras, in awarding the punishment of reduction from the post of Subedar Category III to the post of watchman Category III vide letter No. V & S/4(13)/85 dated 24-10-84, is justified? If not, to what relief the concerned workman is entitled?"

2. Both parties were served with summons. Management was represented by counsel on 6-12-1988. Union was absent and no representation was made though the case was passed over.

3. Today also when the dispute was called, Union was absent and no representation was made on its behalf.

4. Hence Industrial Dispute is dismissed for default.

Dated, this 3rd day of February, 1989.

THIRU, K. NALARAJAN,  
Industrial Tribunal

[No. I-42012/66/87-D.II.B/D.IV(B)]  
R. K. GUPTA, Desk Officer

नई दिल्ली, 14 मार्च, 1989

क्र. भा. 627—औद्योगिक विवाद अधिनियम, 1947 (1947) का 14 की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक, मद्रास के प्रवर्धन के संबद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निहित औद्योगिक विवाद में औद्योगिक अधिकरण, मद्रास के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2 मार्च, 1989 को प्राप्त हुआ था।

New Delhi, the 14th March, 1989

S.O. 627.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Madras as shown in the Annexure in the industrial dispute between the employers in relation to the management of State Bank of India, Madras and their workmen, which was received by the Central Government on the 2nd March, 1989

#### ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMIL NADU, MADRAS

Thursday, the 9th day of February, 1989

Industrial Dispute No. 3/89

(In the matter of the dispute for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 between the workmen and the Management of State Bank of India, Madras-1).

#### BETWEEN

The workman represented by  
The General Secretary,  
State Bank Workmen Staff Union,  
62-A, Gangu Street, Egmore,  
Madras-600008.

#### REFERENCE :

Order No. L-12012(137)/88-D.III(A), dated of the Ministry of Labour, Government of India, New Delhi.

This dispute coming on this day for final disposal upon perusing the reference, and other connected papers on record and the workman being absent, this Tribunal passed the following.

#### AWARD

This dispute between the workman and the Management of State Bank of India, Madras arises out of a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 by the Government of India in its Order No. L-12012(137)/88-D-III(A), dated for adjudication of the following issue:

"Whether the management of State Bank of India is justified in ordering recovery of Rs. 4500 from Shri S. Anbalagan, Cashier at Chidambaram Branch? If not, to what relief the workman concerned is entitled?"

2. Parties were served with summons for the hearing on 9-2-1989.

3. Today, when the dispute was called, the Petitioner-Workman was absent and no representation was made though the case was passed over till 11.45 A.M.

4. Hence Industrial Dispute is dismissed for default.

Dated, this 9th day of February, 1989.

THIRU. K. NATARAJAN, Presiding Officer  
[No. L-12012/137/88-D.III(A)]

नई दिल्ली, 16 मार्च, 1989

क्र. घा. 628.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबंध निम्नलिखित और उनके कर्मचारियों के बीच, अनुबंध में निहित औद्योगिक विवाद में लेबर कोर्ट इन्सुल्टम के पंचरट को प्रकाशित करती है, जो केन्द्रीय सरकार का 7 मार्च, 1989 को प्राप्त हुआ था।

New Delhi, the 16th March, 1989

S.O. 628.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Labour Court, Ernakulam as shown in the Annexure, in the industrial dispute between the employers in relation to the management of State Bank of India and their workmen, which was received by the Central Government on the 7th March, 1989.

#### ANNEXURE

##### IN THE LABOUR COURT, ERNAKULAM

Monday, the 27th day of February, 1989

Industrial Dispute No. 85 of 1987(C)

#### BETWEEN

The State Bank of India represented by the Chief Regional Manager, Regional Office, P.B. No. 2597, Ernakulam, Cochin-31.

#### AND

Their workmen represented by the General Secretary, State Bank Workmen Staff Union, 62-A, Gengu Street, Egmore, Madras-8.

#### Representations :—

Shri B. S. Krishnan.

Advocate, Ernakulam—For Management.

M/s. M. Ramachandran & P. V.

Abraham, Advocates, Cochin-17—For Union.

#### AWARD

The industrial dispute between the above parties was referred to this Court for adjudication by the Government of India as per Order No. L-12012/605/86-D.II(A) dated 8/9 August, 1987. The issue referred for adjudication is—

"Whether the action of the management of State Bank of India in imposing a punishment of dismissal with-

out notice on Shri P. R. Balasubramanian, Clerk, State Bank of India, Calicut Branch with effect from 1-3-85 is justified? If not, to what relief the concerned workman is entitled?"

The validity of the domestic enquiry was tried by me as a preliminary issue. I found on that point as per my order dated 31-1-1989 that there was a proper and valid domestic enquiry. I found further that the findings of the enquiry Officer relating to the first limb of the first charge alone is sustainable and the findings on other charges are unsustainable. Facts necessary for the disposal of the case have been narrated in that order which I shall here extract in full.

#### "PRELIMINARY ORDER

The workman concerned in the dispute Shri P. R. Balasubramanian was a clerk in the State Bank of India, Calicut Branch. While he was working as such disciplinary proceedings the Enquiry Officer the workman was dismissed from service.

I. (i) He has been misusing his S.B. Account with the Bank and he has been negotiating/issuing cheques/ withdrawal slips to the members of the Bank staff on his S.B. account with Calicut Branch without keeping sufficient balance in his account.

(ii) The instruments sent to Calicut Branch by the respective Branches were promptly received at Calicut Branch and he caused their disappearance to gain advantage as there was no balance in his account. He has also not intimated the Bank of the transactions nor repaid the amount.

II. He forged the signature of Smt. Lalitha Balasubramanian on the DP Note 12-6-81 for Rs. 10,000 in respect of Agricultural Gold Loan No. 185/81.

III. He was away at Cannanore on 18-4-81. However he has initialled the attendance register as on that date claiming his presence at the Branch from 10 a.m. to 5 p.m.

IV. He has been in the habit of absenting himself from duties without giving any intimation or leave letter and unless repeatedly reminded, leave letters were not submitted by him. This was pointed out to him on several occasions. During the first half of 1983, he absented himself for 34 days and submitted leave letters only for 11 days, that too after repeated reminders.

The memo of charges was served on the workman giving him a chance to explain the charges. The workman submitted his explanation to the charges. But dissatisfied with the explanation submitted by the workman the Management proceeded with the disciplinary proceedings. An Enquiry Officer was appointed for conducting an enquiry relating to the charges levelled against the workman. The Enquiry Officer conducted the enquiry and entered a finding that the charges against the workman were found to be proved. Accepting the findings of the Enquiry Officer the workman was dismissed from service. Thereafter the Union which espoused the cause the workman moved the Labour Department in the matter and the Department initiated conciliation. Having failed to settle the matter in conciliation the Government of India referred the matter to this Court for adjudication.

2. The workman has filed a claim statement before the Court stating as follows :—

The workman was given a charge-sheet dated 19-1-84 wherein four charges were levelled against him. He had submitted a detailed explanation. But the Bank had chosen to proceed with the matter. An Officer of the Bank had been nominated as an Enquiry Officer. The workman had participated in the enquiry. Apparently the enquiry was held only by way of a formality. In spite of the absence of evidence the enquiry Officer submitted report holding that three charges were fully proved and charge No. IV was partially established. The workman was dismissed on the basis of such finding. There was no justification for imposition of penalty of a capital nature on the workman. The nature of the allegations, if at all could have been classified only as minor misconducts and therefore the punishment was wholly disproportionate.



tionate. The first allegation against the workman was that he had been misusing his savings bank account. It had been admitted by the employee that on stray occasions cheques had been issued in circumstances when sufficient Bank balances were not there. However it was in anticipation of supplementing the shortage. This could not have been characterised as a misconduct much less a major misconduct. As and when the discrepancy had been noted, the amount noted was remitted along with commercial interest. There was no loss occasioned to the Bank. The Enquiry Officer came to the conclusion that as the amounts were remitted in full and also the interest was paid it was indicative of a guilty mind. Conclusion of the Enquiry Officer is unsustainable if not perverse. The enquiry officer had given a scant consideration of the available material. Even though four witnesses were examined nobody has proved the charge that the workman had caused disappearance of instruments. Nonetheless, the Enquiry Officer had no hesitation to hold that the said charge was proved. When the workman was examined no suggestion was made to him as regards to the allegation that he caused disappearance of instruments. The second charge against the workman was that of a forgery.

The allegation was that he had forged the signature of his wife for availing of an agricultural gold loan. The charge was only to be stated for rejected. The allegation was that forgery was on the D.P. note. It came in evidence that on the relevant day the employee's wife had come to the Branch, that there was atleast seven signatures to be made and that they were made in the presence of other officers/employees. The wife of the workman had given evidence that she was the author of the disputed signature. The Bank had examined a person who claimed to be a handwriting expert. But his evidence was not clinching and his opinions were treated as conclusive evidence. As regards the evidence of Smt Lalitha, the Enquiry Officer made a comment that she being the wife of the delinquent employee, her testimony was unacceptable. This approach was clearly uncharitable. There was no explanation as to the necessity for resorting to forgery as the concerned individual was actually present and she had signed several of the documents. The enquiry officer had conveniently refused to advert to any of the above inconveniencing circumstances. The third charge was that the employee had gone to Chennai on 18-4-81 but had initiated the Attendance Register claiming presence from 10 A.M. to 5 P.M. The Enquiry Officer completely overlooked the circumstances that the charge was belated. He also brushed aside the evidence given by the Officer concerned that the workman had left the branch only with permission. The findings as also the observations were therefore based on surmises and therefore not sustainable. As regards the findings on charge No. 4, it was not clear as to what was the idea sought to be conveyed by the enquiry officer. It had come out that the employees had been permitted to avail of leave without prior sanction and the leave period was subsequently regularised. The enquiry officer had categorised the above as a minor misconduct. As a matter of fact, there was no lapse on the part of Balasubramanian on this score. On the whole the general idea gatherable was that disciplinary actions were initiated and concluded on some pretext or other so as to victimise and harass the workman. As regards the conduct of the enquiry also, it is submitted that the workman was put to great prejudice. A perusal of the proceedings and report would convince any person that the enquiry officer was biased and attached no weight to the evidence or stand of the workman. He was apparently carrying out an official duty as instructed by his employer. The findings are liable to be set aside.

3. The Management has filed a counter statement contending as follows:—

The Management has issued a charge-sheet to the workman setting forth the facts and circumstances appearing against him on 19-1-84 and he was called upon to submit his explanation within 7 days of receipt of the same. (The charges framed against the workman are stated in detail in the statement). The Management's witnesses were cross-examined by the defence representative. Both parties were given opportunities to argue their respective cases also. The enquiry officer has given his report on 30-6-84. He has found the workman guilty of first, second and third charges fully and guilty of the fourth charge partially. A copy of the findings of

the enquiry officer together with a copy of the proceedings were furnished to the workman. The disciplinary authority has offered him an opportunity on the proposal to dismiss him without notice, considering the gravity of the misconducts and bad precedents. He had been previously charge-sheeted as per the charge-sheet dated 1-12-81 for misusing his S.B. account with the Bank, abusing his position in the Bank for the purpose of manipulating monetary transactions through the accounts, issuing of cheques without sufficient balance in his account etc. After an enquiry on those charges he was inflicted with a punishment of debarring three increments with cumulative effect. The workman was heard on the proposed punishment of dismissal on 8-11-84 and he has not made out any case before the Disciplinary Authority to change the proposal. The Management has adhered to all principles of natural justice. If for any reason whatsoever, this Court finds that the domestic enquiry is vitiated in any manner, then the Management may be permitted to establish the charges before the Court by adducing fresh evidence. The allegation in the claim statement that the enquiry was held only by way of a formality is false and hence denied. The enquiry was conducted in full compliance with the awards and settlements and principles of natural justice. The findings of the enquiry officer are sustainable. The workman is not put to any prejudice as regards the conduct of the enquiry. The evidence of both parties has been properly considered by the enquiry officer. He was independently discharging his functions in accordance with the principles of natural justice.

4. The workman filed a rejoinder reiterating his contention in the claim statement and refuting the allegations contained in the written statement filed by the Management

5. The question that arises for consideration is whether the domestic enquiry is legal and proper and the findings of the domestic enquiry are vitiated by any of the contentions raised by the workman in the claim statement or those findings are supported by legal evidence.

6. For the management MW1 was examined and Ext. M1 marked. For the workman WW1 was examined.

7. The workman would contend that the Enquiry Officer was biased and pre-determined and he has not conducted the enquiry properly and legally. But he would admit in the cross-examination that he was given ample opportunity to cross-examination the witnesses of the Management and so also he got sufficient time to examine his own witnesses in the enquiry. He would further depose in the cross-examination that the Enquiry Officer has recorded the entire proceedings honestly and the enquiry Officer has also recorded all the representations made by his representative and his representative had put his signature in the proceedings. He would also depose that the enquiry officer has recorded all the facts which were submitted by the representative of the delinquent workman. The enquiry officer MW1 would depose that he has given ample opportunities to the workman for defending his case in the enquiry and he has conducted the enquiry legally and properly and he was not biased and predetermined. He entered the finding relying on the legal evidence adduced by the parties in the enquiry. On a perusal of the enquiry proceedings it can be seen that the enquiry officer has given sufficient opportunity to the workman for defending his case. The workman has cross-examined the witnesses of the Management and the workman has also examined his own witnesses for substantiating his defence. Moreover he has not challenged the procedure adopted by the enquiry officer in conducting the enquiry in the claim statement filed by the workman. On a perusal of the claim statement it can be seen that he has challenged only the findings of the enquiry officer. In these circumstances on perusal of Ext. M1 containing the procedure followed by the enquiry officer in conducting the enquiry and the depositions of MW1 and WW1 it has to be held that the enquiry officer has conducted the enquiry following the principles of natural justice giving sufficient opportunities to the delinquent workman for defending his case and I do so.

8. The next question to be considered is whether the findings of the enquiry officer on all four charges are supported by legal evidence or those findings are perverse. The first limb of the first charge is that the delinquent workman has been misusing his S.B. account with the Bank and he has been negotiating/issuing cheques/withdrawal slips to the members of the Bank staff on his S.B. Account with Calicut Branch

without keeping sufficient balance in his account. It is admitted by the workman in the claim statement that on many occasions cheques had been issued in certain circumstances when sufficient Bank balance was not there in anticipation of supplementing the shortage. On a perusal of the evidence adduced by the Management at the time of enquiry it can be seen that the workman was in the habit of issuing cheques/withdrawal slips without keeping sufficient balance in his saving bank account and used to provide funds only when the instruments were presented. It can also be seen that the four cheques referred to in the charge-sheet were also issued without providing funds in the account. In the circumstances I hold that the finding of the Enquiry Officer that the first limb of the first charge against the workman found to be true is to be accepted as the enquiry officer has entered this finding based on the legal evidence.

9. The second limb of the first charge is that the workman caused disappearance of the instruments sent to Calicut Branch by the respective Branches to gain advantage as there was no balance in the account and the workman has not intimated the Bank of the transactions nor repaid the amount. The Enquiry Officer has relied on the D.D. purchased debit slips that the employee discounted the cheques at Cannanore, Palghat and Coimbatore branches. But it is pertinent to note that for causing disappearance of the instruments it should be in the legal custody of the workman. The Management has no case that the workman caused disappearance of the cheques which were in the custody of others. There is absolutely no evidence in the case to prove that the instruments sent to Calicut Branch by the respective Branches were in the custody of the delinquent workman and he caused disappearance of those instruments which were in his custody. So also there is no satisfactory cogent evidence in the case to prove that the workman caused the disappearance of the instruments which were in the possession of other persons. No other person has raised a complaint that the workman caused disappearance of the instruments which were in their possession. Therefore I hold that the finding of the enquiry officer that the second limb of the first charge was found to be proved against the delinquent workman is unsustainable for the reason that this finding is not supported by any legal evidence.

10. The second charge is that he forged the signature of Smt. Lalitha Balasubramanian on the DP note dated 12-6-81 for Rs. 10,000 in respect of Agricultural Gold Loan No. 185/81. It is an admitted fact that Smt. Lalitha is the wife of Shri. Balasubramanian. She raised an agricultural gold loan from the Bank. DW3 in enquiry who is an officer in the State Bank of India, Cannanore Branch, would depose that the loan was sanctioned by him and the demand loan voucher was passed by him. He would further depose that he remembered that Smt. Lalitha was present. He did not remember the exact time. She came in the morning. He did not also remember her departure time also. He would further depose that there was no pressure exerted upon him directly or indirectly to sanction the loan. Smt. Lalitha Balasubramanian would depose that she has put her signature in the loan application when she was examined as DW1 in the enquiry. She would depose that in all the exhibits shown to her were signed by her and she identified her signature also. But the Management has sent the signature in the promissory note along with the admitted signature of the delinquent workman to the expert who was examined as PW3 in the enquiry. He would state that the signature in the promissory note and the admitted signature of the delinquent are similar. But in view of the admitted fact that the gold loan was raised by the wife of the delinquent workman and she went to the Bank for raising such loan that DW3 in the enquiry who sanctioned the loan to Smt. Lalitha, admitted that the signature in the promissory note is put by her and the loan amount was also given to Smt. Lalitha Balasubramanian, it cannot be held that the delinquent workman forged the signature of his wife for illegal gain solely relying on the opinion of the expert which runs counter to all other available evidence in the case. Hence I hold that the finding of the enquiry officer that charge No. 2 has been found to be proved against the delinquent workman is unsustainable in law and fact.

11. The third charge levelled against the delinquent workman is that he was away at Cannanore on 18-4-1981. However he has initialled the attendance register as on that date

claiming his presence at the Branch from 10 a.m. to 5 p.m. On a perusal of the evidence contained in Ext. M1 it can be seen that no legal evidence is relied on by the enquiry officer to hold that the employee is guilty of this charge. The contention of the delinquent workman is that he had gone to Cannanore with permission of his superior officer. There is no evidence in this case that he had gone to Cannanore without the permission of the Manager. The fact that he had gone to Cannanore on 18-4-81 with permission can be inferred because no disciplinary proceedings or any other steps were initiated against the delinquent workman for this misconduct till the charge was framed in this case on 19th January 1984. This inordinate delay in bringing out this misconduct of the workman charging that he had gone to Cannanore on 18-4-81, but he had initialled the attendance register at Calicut claiming his presence from 10 a.m. to 5 p.m. would indicate that he had gone to Cannanore with the permission of the Bank authorities. Therefore I hold that the finding of the enquiry officer that the third charge against the workman was found to be proved is unsustainable in law as he had gone to Cannanore with permission of the Bank authorities.

12. The fourth charge levelled against the workman is that he has been in the habit of absenting himself from duties without giving any intimation of leave letter and unless repeatedly reminded leave letters were not submitted by him. This was pointed out to him on several occasions. During the first half of 1983, he absented himself for 34 days and submitted leave letters only for 11 days, that too after repeated reminders. As regards this charge the Enquiry Officer has found that the employee cannot be held guilty fully and he is only partially guilty of the charge. It is come out in evidence that the employees had been permitted to avail leave without prior sanction and the leave period was subsequently regularised. It is also come out in evidence in this case that the employee has applied for leave which was sanctioned by the Management and his leave was regularised by the Management also. So it cannot be termed as a misconduct on the part of the employee. Consequently it cannot be held that the workman is liable for the fourth charge. Hence I hold that the finding of the Enquiry Officer that the workman is partially liable for the fourth charge is unsustainable.

13. In these circumstances, on a careful consideration of the entire evidence and records I find that the finding of the Enquiry Officer relating to the first limb of the first charge alone is sustainable and the findings on other charges are unsustainable. Hence I find that the enquiry report is valid and proper only relating to the first limb of the first charge. Pertaining to other charges the enquiry report is not legal and valid.

14. What remains for consideration is as to whether the workman is entitled to any relief in the matter of punishment, as per Section 11-A of the Industrial Disputes Act. In view of my finding that the finding of the Enquiry Officer relating to the first limb of the first charge alone is sustainable and the findings on other charges are unsustainable, the punishment imposed on the workman by the Management is disproportionate for the reason that the first limb of the first charge cannot be construed a gross misconduct on the part of the workman an employee in the Bank. The misconduct stated to be committed by the workman is in the nature of transactions which are usually done between a customer and a Bank, even though he was an employee in the Bank. The allegations are that he has been misusing his S.B. Account with the Bank and he has been negotiating/issuing cheques/withdrawal slips to the members of the Bank staff on his S.B. account with Calicut Branch without keeping sufficient balance in his account. The Bank Authorities have to consider as to whether these concessions were to be given to these persons without keeping sufficient balance in his account. It is true that he took this concession from the Bank taking advantage of his position as an employee of the Bank. The Bank Authorities have no difficulty to refuse this concession to this workman when they found that there is no balance in his account. In these circumstances I hold that the imposition of dismissal is disproportionate to the gravity of the offence committed by the workman. So I hold that ends of justice will be met if the workman is reinstated without back wages and other attendant benefits, but with continuity of service.

III. In the result an award is passed directing the Management to reinstate the workman Shri P. R. Balasubramanian without back wages and other attendant benefits, but with continuity of service.

Ernakulam :  
27-2-1989.

R. RAVEENDRAN, Presiding Officer  
[No. L-12012/605/86-D.II(A)/III(A)]

#### Appendix

Witness examined on the Management's side:

MW1 Shri M. Easow.

Witness examined on the Union's side

WW1 Shri Balasubramonian.

Exhibit marked on the Management's side:

Ex. M1. The file relating to the domestic enquiry conducted against Shri Balasubramonian.

का. शा. 629.—अर्थात् विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रिय सरकार भारत सरकार के प्रवक्तृ के संवद निवेदनों और उनके कामकाज के बीच, अनुबंध, नैतिकता आयोग, विवाद में केन्द्रिय सरकार औद्योगिक अधिनियम न. 1 दम्भ के पंजाब को प्रकाशित करता है, या केन्द्रिय सरकार को 7 मार्च, 1989 को प्राप्त हुआ था।

S.O. 629.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 1, Bombay as shown in the Annexure in the industrial dispute between the employers in relation to the management of State Bank of India and their workmen, which was received by the Central Government on the 7th March, 1989.

#### ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1 AT BOMBAY

Reference No. CGIT-9 of 1986

PARTIES:-

Employers in relation to the management of State Bank of India.

AND

Their Workmen

APPEARANCES:-

For the Management: Mr. B. K. Oza, Advocate

For the Workmen: Mr. Sunderdas Asnani, Advocate.

INDUSTRY: Banking.

STATE: Gujarat.

Bombay, the 4th day of July, 1988

#### AWARD

The Central Government in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, has referred the following dispute for adjudication to this Tribunal:—

"Whether the Chief General Manager, of State Bank of India, Local Head Office, Ahmedabad is justified in terminating the services of Shri Bismilla Khan Pathan with effect from 30-6-1977, and not considering him for further employment while engaging fresh hands? If not, to what relief the workman is entitled?"

2. Shri Bismilla Khan H. Pathan, was employed as a Clerk-cum-Typist in the Deesa Branch of the State Bank of India from 27-3-1975 to 26-8-1975. His services were terminated on 26-8-1975. He was again employed in the Unjha Branch

of the State Bank of India from 13-12-1976, as a Clerk-cum-Typist and his services were terminated on 30-6-1977. According to the workman, this termination is illegal, invalid and imperpetrative being in contravention of Section 25-F of the Industrial Disputes Act, in as much as neither he was served with a notice nor was he paid retrenchment compensation before his services were terminated. It is also his case that immediately after terminating his service, the Bank recruited many employees who were much junior to him and thus violated Section 25-G and 25-H of the Industrial Disputes Act, 1947.

3. According to the workman, initially he was employed by the Bank in the Deesa Branch as a candidate sponsored by the Employment Exchange, after he successfully cleared the recruitment test known as National Institute of Bank Management Test (N.I.B.M. Test). He cleared the test on 20-3-1975 and he was telegraphically directed to join the duty at Deesa Branch, which he did on 27-3-1975. The workman claimed in his statement of claim that he continued to work till 26-8-75, when his services were arbitrarily and abruptly terminated. He was again appointed at the Unjha Branch on 13-12-1976 and he worked in that Branch upto 30-6-1977. According to him, this employment was given to him pursuant to his representation to, and his personal meetings with, the concerned authorities of the State Bank of India, to whom he explained that as he had cleared the N.I.B.M. Test, which was the condition precedent for appointment in the State Bank of India, the Bank cannot terminate his services. According to him, his services were terminated in pursuance to a confidential circular issued by the Bank to the subordinate offices that no employee should be allowed to complete three months of service at a time and should not be allowed to complete 240 days of service in 12 calendar months. He further contended that no enquiry was held before terminating his service. According to him, the action of the Bank in terminating his services is contrary to the provisions of the Sastri and Desai Awards and various other settlements governing service conditions of Bank employees, apart from the fact that the termination was effected without following the procedure prescribed in section 25-F of the Industrial Disputes Act. He further contended that Shri D. C. Pandya and Shri K. A. Patel who were junior to him in service were appointed on permanent basis, even though they had not completed 240 days of service. He further stated that even though the selection list of 1974 was scrapped, 9 persons, whose names appeared in the selection list alongwith him were given employment after his services were terminated. He further contended that all those persons who had cleared the N.I.B.M. Test during 1972 to 1974 were permanently absorbed except he and other workmen who challenged the scrapping of the said selection list, in a Court of Law. Not only that but Shri T. S. Shah, J. I. Patel and J. C. Thakkar were given employment even though they had not passed the N.I.B.M. Test.

4. The Bank contended that Shri Bismilla Khan H. Pathan is not a workman of the Bank nor is the Bank employer of Shri Bismilla Khan H. Pathan and the claim made by him is completely misconceived because the Civil Suit filed by him for declaration that the decision of the Bank to scrap the list of successful candidates in N.I.B.M. Test held in March 1974, was illegal, unauthorised and ultra vires Article 16 of the Constitution of India and that he is entitled as of right to have preferential claim over the vacancies of 1975, 1976 and 1977, was dismissed and the appeal preferred by him against the said decision was withdrawn by him. The Bank denied that the workman was employed by the management of the State Bank of India and initially posted at Deesa Branch as a Clerk on his passing the N.I.B.M. Test. The Bank also denied that appointment at Unjha was given to him pursuant to his representation to and personal meetings with the authorities of the Bank. The Bank further submitted that temporary or casual employment does not entitle an employee to absorption in the permanent cadre. Further by merely passing the N.I.B.M. Test or merely because his name was sent by the Employment Exchange as being eligible for appearing at the N.I.B.M. Test does not entitle the candidate for employment in the Bank because even after a candidate is selected for appointment he is required to go through medical examination and should be found medically fit to be appointed and his antecedents are also required to be verified before he is offered an appointment. The Bank maintained that none of these things were done in the case of Shri B. K. Pathan,

He was neither called for viva voce examination nor his medical examination was taken nor were his credentials or antecedents verified. The Bank further asserted that even though Shri Pathan was aware that the list of successful candidates in the 1974 N.I.B.M. Test was scrapped and a fresh test was held in March 1977, he did not appear for the said test. The Bank further maintained that as the workman had not actually worked for 240 days during a period of 12 calendar months before his services were terminated there was no question of attracting the provisions of Section 25-F, 25-G, and 25-H of the Industrial Disputes Act. There was no question of payment of retrenchment compensation to the workman whose appointment was of casual nature to his own knowledge. The Bank denied that Shri D. C. Pandya or Shri K. R. Patel were done any favour and maintained that they were appointed because they had passed the requisite N.I.B.M. Test in the requisite year at the requisite ranking and were taken according to the merit list. The Bank denied the averments in respect of other candidates who were appointed on the basis of the selection list of 1974. The Bank also maintained that facts in respect of the appointment of Shri T. S. Shah, J. J. Patel, and I. C. Thakkar, are materially different. The Bank denied that all employees who cleared the N.I.B.M. Test during 1972 to 1974 have been permanently absorbed except Shri Pathan and others who had challenged the scrapping of the list. The Bank denied that it had acted contrary to the provisions of the Sastry and Desai Awards and maintained that there was no question of holding any enquiry before terminating the services of the workman as the action was not punitive.

5. According to the workman, he was posted at the Deesa Branch of the State Bank of India after he passed the qualifying examination namely the examination held by the National Institute of Bank Management. He claimed that he cleared the test in October 1974 and viva voce test in March 1975 and thereafter he received the appointment order. According to him, the post in which he was working in Deesa Branch was a permanent post. It is also his case that his appointment in the Unjha Branch was also in a permanent post which was also offered to him on the basis of the select list of candidates prepared after the test held by the N.I.B.M. in 1974-75. The Bank has specifically denied that workman Shri Pathan was selected for appointment and maintained that his appointments in Deesa and Unjha Branch were purely temporary appointments. The Bank maintained that Shri Pathan neither appeared for Viva Voce Examination nor his medical test was taken nor his credentials or antecedents verified.

6. The workman had admitted in his cross-examination that he was not intimated the result of the viva voce test nor was he subjected to any medical test nor was he asked to produce character certificate. It is also pertinent to note in this context, that Shri Bismilla Khan Pathan was one of the Plaintiffs in Civil Suit No. 1526 of 1977, in which 17 persons who claimed to be successful candidates at the test held by the N.I.B.M. in December 1974 had challenged the action of the State Bank of India in scrapping the list of successful candidates prepared on the basis of N.I.B.M. Test held in 1974. In that Suit Shri Bismilla Khan Pathan and other Plaintiffs claimed that as they were declared successful in the test and their names included in the list of successful candidates and that they were offered temporary employment on the basis of their selection, they had rightful claim for permanent employment in the posts for which the test was held. They also based their claim for permanent employment on promissory estoppel. According to them in view of the representation made to them by the Bank and the past practice followed by the Bank of absorbing all successful candidates, whose names were included in the lists prepared on the basis of the N.I.B.M. Tests, the Bank was estopped from scrapping the list, terminating their temporary employment and denying them permanent employment on the basis of the select list prepared for the year 1975. This Suit was dismissed and the appeal preferred by the Plaintiff and others to the High Court was withdrawn. The trial judge considered the claim of each of the Plaintiffs and rejected it holding that they have no right to permanent employment in the Bank on the basis that their names were included in the list of selected candidates for the year 1975 and that they were given temporary employment for sometime. So far as Shri Bismilla Khan

Pathan is concerned, his claim was rejected for the following reasons which are given in the para 24 of the judgment:—

"Bismilla Khan Mansanbhai Pathan, Ex. 69, is plaintiff No. 12. He has deposed that in 1974, he was serving as Clerk at Tharad in the State Transport Corporation and he was discharged from that service on 7-4-1974. He was again appointed by the S.T. Corporation temporarily on 1-12-1974 and he resigned from that job on 26-3-1975. He has stated that he appeared at the N.I.B.M. test in October 1974, at Patanpur. He says that, he does not know as to what was his rank in the list prepared by the Bank. He was called for an oral interview in March 1975, and then he was temporarily appointed as a Clerk at Deesa. This appointment was given to him telegraphically. He resumed his duty on 21-3-1975 and served there till 26-7-1975. On 14-6-1975 the Regional Office of the defendant telegraphically informed him to take charge at Bhuj as Clerk-cum-Cashier, but he did not take over charge at Bhuj, because according to him, the then Accountant of Deesa told him that the appointment at Deesa was temporary and the appointment at Bhuj was also temporary and, therefore, there was no fun in going to Bhuj after giving up Deesa job. He says that due to this, he decided not to join at Bhuj, having acted in this manner, this plaintiff now claims a right against the defendant on the basis of promissory estoppel. He does not say that he did not go to Bhuj because a promise was given to him by the defendant bank that he will be permanently absorbed because of appointment at Deesa. At para 3, he deposed that on 13-12-1976, the Cashier of Unjha branch of the defendant informed that the Manager at Unjha had conveyed a message that this plaintiff should join at Unjha. He says that he contacted Shri A. R. Bhatt, Branch Manager, Unjha, on 13-12-1976 and demanded a written order, but he was asked to resume duties orally. He was relieved from that job on 30-6-1977 and at that time he asked the Branch Manager the reason for discharging him. The Branch Manager told him that there was pressure from above. This is the deposition of the plaintiff, who has been claiming promissory estoppel, against the defendant. He has no knowledge as to what was his rank in the list. He did not apply for appearing at the examination that was held in March, 1977 because, according to him he was age barred. He does not say that he did not appear in 1977, because he was waiting under a fond hope of the promise said to have been given to him. He was not given written order but he took over charge on the basis of some oral message conveyed to him by the Branch Manager. How the defendant bank can be held liable for such an oral order given by the Branch Manager without obtaining the requisite sanction for filling up the vacancy?"

It would not therefore be open to Shri Bismilla Khan Pathan to contend that he was employed on permanent basis in view of his successful passing of the N.I.B.M. Test. It is also pertinent to note that till he raised the present Industrial Dispute, which he did only after withdrawal of the appeal, he never challenged his termination either of his first appointment in the Deesa Branch or his second appointment in the Unjha Branch. It is also difficult to believe that permanent appointment on the basis of the selection test could be made without issuing any appointment order and just by telegram and without observing the normal formalities such as medical examination and verification of antecedents.

7. The Bank has also placed on the record sufficient material to show that Shri Pathan's appointment in the Deesa Branch as well as in the Unjha Branch were purely temporary appointments. The Bank has produced at Ex. M-33 the Establishment Register of the Deesa Branch for the years 1975 and 1976 and at Ex. M-32 the Establishment Register of the Unjha Branch for the year 1977. In both these registers Shri Pathan's designation is shown as Temporary Clerk. The same is the position in Ex. M-25 to Ex. M-29 which are office copies of the pay sheets of the Unjha Branch from

January 1977 to June 1977. Not only that but the certificates Ex. W-3 and Ex. W-5 which the workman has himself produced show that his employment was of temporary nature. Ex. W-3 dated 16-8-1975 was issued by the Branch Manager of the Deesa Branch. The Manager certified that Shri Bismilla Khan Pathan had served in the Deesa Branch from 27-3-1975 to 28-6-1975 as temporary Clerk-cum-Typist. Ex. W-5 is a certificate issued by the Manager of the Unjha Branch. In this certificate it is not mentioned that Shri Pathan's employment was temporary. It is however mentioned in that certificate that Shri Pathan had worked in that Branch for 200 days from 30-12-1976 to 30-6-77. But the position that even in the Unjha Branch Shri Pathan's employment was of temporary nature is reflected in the pay sheets Ex. M-25 to Ex. M-29. It is therefore crystal clear that Shri Pathan's employment in Deesa Branch as well as in the Unjha Branch was temporary.

8. It is the contention of the workman that the termination of his service amounted to retrenchment and as before terminating his service he was neither served with any notice nor paid retrenchment compensation as contemplated by section 25-F of the Industrial Disputes Act the retrenchment, and therefore the termination, was void ab-initio and illegal. There is no substance in this contention because as rightly pointed out on behalf of the Bank that neither in the Deesa Branch nor in the Unjha Branch Shri Pathan had worked for 240 days during 12 calendar months prior to the two termination orders. In the Deesa Branch he worked only for five months during the period from 27-3-1975 to 28-6-75 and in the Unjha Branch he worked for 200 days from 30-12-1976 to 30-6-1977. Section 5-F of the Industrial Disputes Act therefore was not attracted and the termination cannot be said to be void on the ground that before terminating his services the workman was not served with any notice and was not paid any retrenchment compensation.

9. The termination is challenged also on the ground that no notice contemplated by paragraph 522 of the Sastri Award was given by the Bank before the workman's services were terminated. According to the workman, failure of the management to give such a notice rendered the termination bad in law. The procedure for termination of employment of an employee other than a permanent employee or probationer is laid down in Clause (4) of paragraph 522 of the Sastri Award. It reads as follows:—

"The services of any employee other than a permanent employee or probationer may be terminated, and he may leave service, after 14 days' notice. If such an employee leaves service without giving such notice he shall be liable for a week's pay (including all allowances)."

This provision as it worded cannot be interpreted to mean that no termination can be effected without giving the notice contemplated by it and that if no such notice is given the termination is bad. The breach of this provision does not have the same effect of rendering the termination order void as would have been the effect of non-observance of the conditions of retrenchment laid down in section 25-F of the Industrial Disputes Act. The distinction between the two provisions was considered by the Gujarat High Court in the case of State Bank of India V/s. Rawal-1981 (Part-I Service Law Reports 831). The learned Judges of the Division Bench held that failure to serve notice contemplated by paragraph 522 Clause (4) before termination of service of a temporary workman is not fatal and it is only non-compliance of Section 25-F which makes the termination void ab-initio and that temporary workman whose services are terminated without notice under paragraph 522 Clause (4) of the Sastri Award is not entitled to reinstatement for violation of the Sastri Award. The workman in such case would only be entitled to get wages for 14 days in lieu of notice.

10. The workman has made a grievance that other persons whose names were included in the select list of candidates prepared for the year 1975, who also had temporary employments like him and who were junior to him, have been subsequently absorbed and that only he and other persons who challenged the scrapping of the select list were left out vindictively. It is also his grievance that some of the employees were employed even though they did not pass the

N.I.B.M. Test. This grievance is however without foundation. The correct position has been explained by Shri Anupam Narendra Svarup Jhari, who was working as a Desk Officer in the Personnel Department of the Regional Head Office from 1980 to 1986, and was handling promotions and recruitments. He has stated in his evidence that persons mentioned at Serial No. 1 to 6 in sub-para (ii) of para 4 of the statement of claim of the workman were absorbed in permanent category on the basis of the special test held by the National Institute of Bank Management, Bombay on 25-5-1980. Persons mentioned at Serial No. 7, 8 and 9 remained absent at the test and hence they were not absorbed. He further stated that persons mentioned at Serial No. 1 to 4 in sub-para (iii) of para 4 of Statement of claim were appointed on permanent basis on the basis of the Test taken by the N.I.B.M. in 1982. He went on to say that Serial No. 7 was also appointed on the same basis, but he did not accept the appointment and hence his appointment was cancelled. He further stated that persons mentioned at Serial No. 5 and 6 in sub-para (iii) were not absorbed in permanent category because they failed in the test. He claimed that he was incharge of the 1982 test held at the Ahmedabad centre. It is an admitted position that Shri Pathan did not appear for the tests held in the 1977-1980 and 1982. Shri Pathan therefore would not be entitled to reinstatement in service or employed on the basis of his alleged selection in the N.I.B.M. Test held in the year 1974-75. As observed above he will only be entitled to get 14 days' wages in lieu of notice.

11. In the result, it is held that the action of the management of the State Bank of India in terminating the services of Shri Bismilla Khan Pathan w.e.f. 30-6-1977 and not considering him for further employment was justified and Shri Pathan is not entitled to any relief except 14 days' wages in lieu of notice which the management of the Bank is directed to pay within one month from the publication of the Award. Award accordingly.

M. S. LAMDAK, Presiding Officer  
(No. 1-12011/70/85 P. V. SREEDHARAN, Desk Officer

नई दिल्ली, 15 मार्च, 1989

का. धा. 630.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्तर्गत में, केन्द्रीय सरकार सेक्टरल रेलवे श्रमिकों के प्रमुखों ने सम्बन्धित श्रमिकों और उनके कार्यवाहों के बीच, अन्तर्गत में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक प्रतिक्रिया, कामगार के पक्षों को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-3-89, को प्राप्त हुआ था।

New Delhi, the 15th March, 1989

S.O. 630—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the award of the Central Government Industrial Tribunal Kanpur as shown in the Annexure in the industrial dispute between the employers in relation to the management of Central Railway Jhansi and their workmen which was received by the Central Government on the 7-3-89.

#### ANNEXURE

BEFORE SHRI ARIAN DEV PRESIDING OFFICER  
CENTRAL GOVERNMENT INDUSTRIAL  
TRIBUNAL KANPUR UTTAR PRADESH

Industrial Dispute No. 128 of 1987

In the matter of dispute between :

Shri Deep Chand House No. 468 Nanakganj Sipri  
Bazar, Jhansi, U.P.

AND

The Divisional Railway Manager, Central Railway,  
Jhansi, U.P.

## AWARD

1. The Central Government, Ministry of Labour, vide its notification No. L-41012/56/86-D.II(B) dated 2-9-87, has referred the following dispute for adjudication to this Tribunal :

"Whether the termination of Shri Deep Chand with effect from 25-11-82, by the management of Central Railway, Jhansi is legally in order and justified. If not, to what relief and from what date, the workman is entitled to ?"

2. Workman's case in brief is that he was served with a chargesheet for his alleged unauthorised absence by the management. According to him the chargesheet was not issued by competent authority. Moreover, it was not described in the chargesheet whether it was a major penalty chargesheet or a minor penalty chargesheet. He was not furnished with the copies of documents relied upon in support of the charges nor with the copies of statement of witnesses to be examined in support of the charge. During the inquiry the charges were not read over to him by the Enquiry Officer. He was also not given an opportunity to take assistance of a defence representative. During the inquiry, the Enquiry Officer, recorded questions put to him in English and himself recorded their answers in English. The inquiry was not conducted fairly and properly and in accordance with the principles of natural justice. Lastly, he has alleged that the punishment awarded to him was excessive. Against the order of punishment he filed an appeal, the result of which has not been made known to him uptill now.

3. On the other hand it is pleaded by the management that the chargesheet was issued to the workman by the competent authority. At the inquiry answers given by the workman were correctly recorded by the Enquiry Officer. The Enquiry Officer conducted the inquiry in accordance with the principles of natural justice and he gave full opportunity to the workman to engage a defence representative but the workman declined to do so. The applicant was removed from service by order dt. 25-11-1982. His appeal dated 27-11-82/23-12-82 was dismissed by the Appellate authority on 4-3-83. Thereafter, the workman filed a second appeal which was rejected as second appeal is not provided for by the rules.

4. In support of his case the workman has filed two affidavits one in support of the facts alleged by him in the claim statement and the second after the filing of the written statement. The management, on the other hand, has led no evidence oral or documentary.

5. The chargesheet has not been filed by either party. Since, the workman has assailed the chargesheet on the ground that it was not issued by competent authority and further that it was not mentioned in the chargesheet whether it was a major penalty chargesheet or a minor penalty chargesheet. He sought to have filed it. Hence, it cannot be said that chargesheet was not issued by the competent authority or it was not mentioned in the chargesheet whether it was a major penalty chargesheet or a minor penalty chargesheet.

6. The workman has next taken the plea that copies of documents mentioned in the chargesheet and the statements of the witnesses to be recorded at the inquiry by the management were not furnished to him. There is no doubt that the chargesheet has not been filed by either side. It can be safely presumed that the officer issuing the chargesheet must have mentioned in the chargesheet as to what documents would be relied upon in support of the charge and who would be examined by the management in support of the charge. What were those documents, in the absence of the chargesheet we are unable to know. So it is difficult to say whether those documents were material or not. Further there is no evidence from the side of the workman that there had been any preliminary inquiry prior to the service of the chargesheet upon him and in the

said inquiry some of the witnesses who were named in the chargesheet were examined. The burden was on the workman. Since he has failed to discharge the burden, this plea cannot be upheld.

7. During his cross examination in reply to a question put to him by authorised representative for the management the workman replied that at the inquiry from the side of the management no witness was examined. He also stated that he too could not examine any witness in defence as he was not given an opportunity for the same. There is no evidence against the facts deposed to by the workman in his cross examination from the side of the management. The management should have produced the inquiry proceedings or atleast the inquiry report in order to show that at the inquiry in support of the charges the management examined some witnesses and further to show that opportunity was given to the workman to give evidence in defence. The management having failed to adduce evidence on this point it will have to be held that the inquiry was not conducted in accordance with the principles of natural justice nor there was any evidence to support the charge. On 15-9-88 time till 14-10-88 was given to the management filing affidavit evidence but the management did not file any affidavit evidence even though two more opportunities were given to the management.

8. In view of it the order of termination/removal of Shri Deep and w.c.f. 25-11-82, passed by the management is illegal and unjustified. The result is that the workman is entitled to be reinstated with full back wages on his furnishing an affidavit to the effect that from 25-11-82, he was not gainfully employee.

9. The reference is answered accordingly.

ARJAN DEV, Presiding Officer

[No. L-41012/56/86-D. II(B)]

का. घा. 631.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूरदर्शन नई दिल्ली के प्रबन्धनत्व में सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधि-करण, नई दिल्ली के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-3-89 को प्राप्त हुआ था।

S.O. 631.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Doordarshan New Delhi, and their workmen, which was received by the Central Government on the 1-3-1989

## ANNEXURE

BEFORE SHRI G. S. KALRA, PRESIDING OFFICER,  
CENTRAL GOVT. INDUSTRIAL  
TRIBUNAL, NEW DELHI

I. D. No. 54/86

In the matter of dispute—

## BETWEEN

I. C. Chaturvedi through The General Secretary,  
Doordarshan Programme Staff Union, Akashwani  
Bhawan, New Delhi.

## VERSUS

The Director General, Doordarshan, Mandi House, New Delhi.

## APPEARANCES

Shri O. P. Arora for the workman.

Shri Narinder Chaudhary for the Management.



## AWARD

The Central Government in the Ministry of Labour vide its Order No. L-42012/45/85-D, II(B) dated 26th May, 1986 has referred the following industrial dispute to this Tribunal for adjudication :

"Whether denial of promotion by the management of Doordarshan New Delhi to Shri L. C. Chaturvedi to the post of Producer Grade-II is justified ? If not, to what relief is he entitled ?"

2. The case of the workman as per statement of claim is that the new wing Television was created somewhere in 1959 by the Ministry of Information and Broadcasting under the Administrative Control of Director General, All India Radio. The Television Centres remained in the Administrative Control of the Director General, All India Radio from 1959 to 31-3-1976 and during these years no recruitment rules were formulated, for the Television Staff Artists. The workman L. C. Chaturvedi was initially appointed as Production Assistant (Staff Artist) on 1-10-68 in the pay scale of Rs. 255-480. The Management had designated the numerous Production Assistants for Administrative convenience, as Production Assistant (Sound Recording), Production Asstt. (Camera), Production Asstt. (Set Erection), Production Asstt. (Film Editing). Accordingly the workman was designated as Production Asstt. (Film Editing) for the sake of administrative convenience. During March, 1973 certain categories of Staff Artists namely Property Asstt. Floor Manager, Drama Artists, Production Asstt. (Camera), and Production Asstt. (Film Editing) were asked to appear before the Screening Committee for the post of Producer Grade II. Shri V. C. Sarin, Film Editor T. V. Centre, All India Radio, who was colleague of the workman was asked to appear before the Screening Committee for the post of Producer Gr. II but the workman Shri L. C. Chaturvedi was not invited to appear before the Screening Committee. The said screening committee had recommended the names of some Property Asstt. Drama Artists, Production Asstt. (Camera), and Production Asstt. (Film Editing) for promotion to the post of Producer Grade II. Accordingly Shri V.C. Sarin, Production Asstt. (Film Editing) was also offered the post of Producer Grade II, but he had declined to accept the same for reasons known to him. From years 1973 onwards till 1976 when the separation of Television from all India Radio, took place, the workman had regularly been approaching the Management for considering his case of promotion to the post of Producer Gr. II but his request was neither considered nor he was ever informed about the fate of his representations. The Television Centres throughout India were separated from the Directorate General of All India Radio w.e.f. 1-4-76. The Ministry of Information and Broadcasting framed the recruitment rules for the T. V. Staff Artists for the first time vide their letter dated 24-8-1979. However, these rules were never published in the Gazette of India hence they have no force of law. These rules do not contain the category of Production Assistant (Film Editing) and as such the designation of the workman has been changed to that of Film Editor unilaterally. It has been alleged that this action of changing the designation of the workman is motivated and mala fide with the sole aim of removing the name of the workman from the seniority list of production assistants so that he may not get the promotion to the post of Producer Gr. II even on the basis of the New Recruitment Rules. It has further been stated that the workman has been entrusted by the management to produce programmes as an independent Producer vide T.V. Centre New Delhi Office order dated 21-9-84 and in fact he has produced many programmes independently. Under the circumstances, the workman has prayed that he may be promoted as Producer Gr. II from the due date with all attendant benefits.

3. The Management in its written statement submitted that at the initial stage of introduction of T.V. when distinct designations in various disciplines had not developed the staff recruited to assist the Producer in Programme Planning and Production etc. in various specialised disciplines of Film Editing, Sound Recording etc. were categorised for administrative convenience as Production Assistant (Film Editing),

Production Assistant (Sound Recording), etc. Accordingly Shri L. C. Chaturvedi was initially designated as Production Assistant (Film Editing). However, after subsequent development of distinct designations in the respective specialised disciplines, the incumbents of Film Editing were given the designation of Film Editor in the same fee scale. This designation of Film Editing was accepted by L. C. Chaturvedi in his correspondence with the Department as also in the contract signed by him with the Government for working upto the age of 58 years. It was further submitted that the post of producer Gr. II in 1973 was filled cent per cent by direct recruitment. However, in March, 1973, for filling up the posts in the category of Producer Grade II, a limited departmental selection was held on administrative grounds as one time exception. For this purpose, all categories of T. V. Contract staff including Film Editor working in T.V. in the fee scale of Rs. 215/- and above having 5 years service were made eligible. Shri L. C. Chaturvedi who was appointed w.e.f. 1-10-68 did not fulfil the eligibility conditions in March, 1973 and, therefore, his case was not considered. The representations made by the workman were duly considered as per the existing recruitment rules of staff Artists in Doordarshan but it was not found possible to accede to the request of Shri Chaturvedi for promotion to the post of Producer Gr. II and thus no injustice has been done to him. It was stated that in the first instance the workman was designated as Production Assistant (Film Editing) for administrative/technical reasons but the fact is that he was a staff artist (Film Editing) and this is fully reflected by the contract signed by him in 1969 and it was later extended to the age of 58 years. The designation Film Editor was being used for a long period in the correspondence to and from the workman and the contention of the workman that his designation was changed to Film Editor unilaterally is not correct. In fact he himself had accepted it by using the same designation in his communications with the office, and he had also accepted the selection grade in the said designation w.e.f. 1-10-80. The nature of duties of Film Editor are different from the duties of production Assistant, therefore, there is no question of counting his seniority with that of Production Assistant for the purposes of promotion to Producer Grade II. Even if the designation had not been changed from Production Assistant (Film Editing) to Film Editor, it would not have made any difference to his claims for promotion as Producer Grade II. As per recruitment rules, the Film Editor cannot be considered for promotion as Producer Gr. II. Any person who fulfils the requisite conditions of the recruitment rules for the post, can apply for that post as and when advertised. His selection depends on his performance before the Selection Committee. The applicant was given Selection Grade in the post of Film Editor in the scale Rs. 550-800 w.e.f. 1-10-80 and he has been promoted as Edit Supervisor in the scale Rs. 600-1200 w.e.f. 31-7-86 and this scale is equivalent to the scale attached to the post of Producer Gr. II. Hence the Management justified its actions.

4. At the very outset, it may be observed that the claim of the workman that he should be promoted as producer Gr. II retrospectively from the date Shri Kewal Kapur and Rajeshwar Nath were promoted is wholly untenable. It is not disputed that promotion to the post of Producer Gr. II is by way of Selection and it is not a time scale promotion. This means that the promotion of any employee depends upon his performance before the selection committee and he cannot claim as a matter of right. What he can claim at best is right to be considered for promotion. Now the workman himself admits that there were no recruitment rules or rules for promotion till the T.V. was separated from Directorate General of All India Radio w.e.f. 1-4-76. Therefore, it is not clear under what provision of law or rules he claims promotion for the period upto 1-4-76. The Management has stated that in 1973 the post of Producer Gr. II were filled wholly by Direct Recruitment but in March, 1973 a limited departmental selection was held as a one time exception on administrative grounds and for this purpose, all categories of T.V. Contract Staff including Film Editor who fulfilled the eligibility conditions were interviewed and the workman did not fulfil those eligibility conditions because the Staff Artist should have had minimum 5 years of service in the scale of Rs. 215/- and above. The workman had joined the service as a T.V. Artist only w.e.f. 1-10-68 and, therefore, admittedly he had not completed 5 years of service at the time of the holding of the said limited depart-



S.O. 633.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (1 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 2, Bombay as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Cantonment Board, Pune and their workmen, which was received by the Central Government on the 7-3-1989.

## ANNEXURE

## BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No. 2, BOMBAY

Reference No. CGIT-2/31 of 1987

## PARTIES

Employers in relation to the Management of Cantonment Board, Pune.

## AND

Their Workmen

## APPEARANCES

For the Employers.—Shri P. V. Sathaye Dy. Cantonment Executive Officer.

For the Workmen.—Shri A. N. Kulkarni, Chief Revenue Supdt.

INDUSTRY : Cantonment Boards, STATE : Maharashtra, Bombay, dated the 23rd February, 1989

## AWARD

The Central Government by their order No. L-13011(4)/85-D. II(B) dated 21-5-1987 have referred the following industrial dispute to this Tribunal for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 :—

“Whether the action of the CEO-Cantonment Board, Pune in not confirming 19 employees (as per annexure) employed by him from 3-8-1983 is justified and legal? If not, to what relief are the concerned workmen entitled to?”

## ANNEXURE

1. Shri Riyaz Munshi
2. Shri Ramesh Rmachandar Shinde
3. Shri Dilip K. Sable
4. Shri Gorukh R. Yadeo
5. Shri Mahadeo Shripati Sakat
6. Shri Basanta Basappa Konsavi
7. Shri Mohan Malhari Kamble
8. Shri Ramachandra Maroti Kamble
9. Shri Shaikh Abdul Ajit
10. Shri Pand arinath Khandu Joshi
11. Shri Wattatraya Buruppa Ugava
12. Shri Nagu Soma
13. Shri Dilip Dharma Bhalerao
14. Shri Husain A. Kadar Shaikh
15. Shri Arjoon Laxman Khandale
16. Shri Shankar Raghunath Kamble
17. Shri Kisan Balu
18. Shri Ghaby Yadu Khandale
19. Shri Laxman Yadeo.

2. The case of the Pune Cantonment Karmachari Sangh as disclosed from the claim statement (Ex. 2/W) in short is thus :—

The Pune Cantonment Board appointed 19 Mazdoors as mentioned in the annexure in the Engineering Department of the Motor Workshop of the Pune Cantonment Board, in the pay scale of Rs. 200-3-230-5-255 Ext. 5-280 with usual allowances in February, 1984. However, the Executive Officer of the Cantonment Board, Pune, in spite of the repeated requests of the Sangh, did not take any action to confirm the said employees in the service of the Cantonment Board on the ground that they were not sponsored by the Employment Exchange. Due to the said denial of the Cantonment Board, Pune, the right of the employees to receive the benefits like Provident Fund, Pensionary benefits, leave etc. have been denied to the employees. In

fact the Employment Exchange Notification Act, 1959, does not apply to the Class IV employees of the Cantonment Board. The provisions of the Cantonment Fund Servants Rules 1937 cannot override the provisions of the Act passed by the Parliament namely, the Employment Exchange (Compulsory Notification of vacancies) Act, 1959. The matter was thereafter taken up with the Assistant Labour Commissioner (C) for conciliation, as the conciliation efforts failed, the Central Government referred the dispute in question to this Tribunal for adjudication. The Sangh, therefore, prayed that the Cantonment Board be directed to confirm the said 19 employees and allow them to contribute to the Provident Fund etc. and they be allowed the necessary benefits.

3. The case of the Cantonment Board, Pune as disclosed from the written statement (Ex. 3/M) filed by its Additional Cantonment Executive Officer, in short is thus :—

The Central Government is competent to make the rules to carry out the purposes and objects of the Cantonment Act, 1924, as per the powers conferred upon under section 280(2)(c) of the said Act. The Central Government has framed the Cantonment Fund Servants Rules, 1937. As per rule 3-B(1) of these Rules all the first appointment to the service shall be made through Employment Exchange or in such other manner as the Central Government may direct. Further, the Office Order No. 59/83 dated 3-8-1983, under which the said 19 employees have been appointed, does not state that they will not be confirmed. The last para of the said Office Order says that absorption of the above employees in permanent vacancy will be considered only on receipt of Government sanction, as and when received. Thus it is quite clear that the Employer, i.e. the Pune Cantonment Board, has no intention to throw away these 19 employees. The said 19 employees have not been sponsored by the Employment Exchange. As such, they cannot be absorbed in the permanent vacancy unless the sanction of the Central Government is received.

4. The Additional Cantonment Executive Officer further stated in his written statement that the present case will be again taken up with the Central Government and appear the directions of the Central Government, the regularisation of the services of the said 19 employees will be considered.

5. The Pune Cantonment Karmachari Sangh by its rejoinder (Ex. 4/W) denied the contentions raised by the Cantonment Board in its written statement, and repeated its case.

6. On the above pleadings, the following issues were framed :—

- (1) Whether the Employment Exchange Notification Act, 1959, does not apply to Class IV employees in question?
- (2) Whether the 19 employees in question, not being sponsored by the Employment Exchange, cannot be absorbed in permanent vacancies, unless the sanction of the Central Government is received?
- (3) Whether the action of the CEO, Cantonment Board, Pune, in not confirming 19 employees employed by him from 3-8-1983 is justified and legal?
- (4) If not, to what relief are the concerned workmen entitled?
- (5) What Award?
7. My findings on the above said Issues are :—
  - (1) Does not apply to the workmen in question.
  - (2) They can be absorbed in the permanent vacancies.
  - (3) No.
  - (4) As per the final order
  - (5) As per Award.

## REASONS

## AWARD

## ISSUE 1 :

8. In this case, no oral evidence was led on behalf of any of the parties. The representatives of the respective parties submitted their arguments in support of their respective contentions. According to the Cantonment Board, under Rule 5-B(1) of the Cantonment Fund Servants Rules, 1937, all the first appointments to the service shall be made through Employment Exchange, or in such other manner as the Central Government may direct. It was contended on behalf of the Cantonment Board that the appointments of the 19 employees in question were not made through the Employment Exchange and their names were not sponsored by the Employment Exchange. Now, I find that the Employment Exchange (Compulsory Notification of Vacancies) Act, 1959, does not apply to the present 19 workmen/ Mazdoors. Under Section 3(1)(d) of the said Act, this Act shall not apply in relation to the vacancies in any employment to do unskilled office work. Admittedly, the 19 workmen in question have been appointed as Mazdoors, and as such they are to do unskilled work. Therefore, the said Act of 1959 does not apply to their appointment condition. Therefore the question of making them permanent in service can be considered irrespective of the provisions of the Act of 1959. Issue No. 1 is found in the affirmative.

## ISSUE No. 2 :

9. I find that the said Act of 1959 does not apply to the service conditions of the said workmen in question, and the question of getting any sanction from the Central Government services. As per Rule 5-B(1) of the Cantonment Fund Servants Rules, 1937, all the first appointments shall be made through Employment Exchange, or in such other manner as the Central Government may direct. As their appointments have already been made in 1983 it must be presumed that they have been appointed as per the directions of the Central Government. They have been appointed in service from 3-8-1983. It is an admitted fact that they are still in service. As such they have already completed their probation period of six months, and are in continuous service of more than five years. Therefore, there is no reason why they should not be confirmed in service.

10. It may be noted that the Cantonment Board had already passed a resolution dated 15-1-1985 (Ex. 6/W) to the effect that the 19 employees in question be also confirmed. It is seen from the resolution Ex. 6/W that as per the order of this Tribunal in some other case regarding some other 74 employees of the Cantonment Board they were directed to be confirmed in service. Thereafter, the Cantonment Board passed a further Resolution that those 74 employees as well as some other employees and also the remaining 19 employees i.e. the employees in question, be also confirmed. Further the appointment Order dated 3-8-1983 of the said employees states in its last para that their absorption in permanent vacancies will be considered only on receipt of the Government sanction, if and when received. Therefore, the Cantonment Board has certainly made clear of their intention to absorb them in permanent vacancies as soon as the Government sanction in the matter is received. As noted above, a period of more than five years has elapsed since their initial appointment. Therefore, the Cantonment Board is competent to confirm them in service irrespective of the sanction of the Central Government. Issue No. 2 is found accordingly.

## ISSUES Nos. 3 and 4

11. Therefore, for the above said reasons, the action of the CEO, Cantonment Board, Pune in not confirming the 19 employees appointed since 3-8-1983 is not just and legal. Issue No. 3 is answered in the negative.

12. The said employees are, therefore, entitled for their confirmation in service at the earliest. Issue No. 4 is found accordingly.

## ISSUE No. 5 :

13. Hence the following award is passed.

The action of the CEO-Cantonment Board, Pune, in not confirming the 19 employees appointed by him from 3-8-1983 is not just and legal. The CEO, Cantonment Board, Pune, is therefore, directed to confirm the services of 19 employees in question within three months from the date of publication of this Award in the Government Gazettee.

The parties to bear their own costs of this Reference.  
Dt. 23-3-1989.

P. D. APSHANKAR, Presiding Officer  
[No. I-13011/4/85-D. II(B)]

क्र. घा. 634.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूचण में, केन्द्रीय सरकार, सीनियर डिवाइजनल पर्सनल आफिसर, साउथ रेलवे, तिरुचिरापल्ली के प्रबन्धनत्व में सम्बद्ध नियोजकों और इनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में औद्योगिक अविकारण, सट्रास के पंचपट का प्रकाशित करनी है, जो केन्द्रीय सरकार की 7-3-89 का प्राप्त हुआ था।

S.O. 634.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Madras as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Sr. Divisional Personnel Officer, Southern Railway Tiruchirapalli and their workmen, which was received by the Central Government on 7-3-1989.

## ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMIL NADU,  
MADRAS

Monday, the 13th day of February, 1989

Industrial Dispute No. 6 of 1989.

[In the matter of the dispute for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 between the workmen and the Management of Senior Divisional (Personnel Officer, Southern Railways, Tiruchirapalli.)]

## BETWEEN

1. Thiru K. Kalliamurtiy  
2. Thiru D. Kallaperumal  
3. Thiru M. Thangaraj  
4. Thiru M. Paramasivam  
C/o Shri T. Penn Walter  
No. 161, Thambu Chetti  
Street, II Floor,  
Madras-600001.

## AND

The Senior Divisional Personnel Officer, Southern Railway, Tiruchirapalli, Tamil Nadu.

## REFERENCE :

Order No. L-41012/23/88-D II(B), dated 4-1-1989 of the Ministry of Labour, Government of India, New Delhi.

This dispute coming on this day for final disposal in the presence of Thiru R. Venugopal, Advocate for the Management upon perusing the reference and other connected papers on record and the workmen being absent, this Tribunal passed the following Award.

## AWARD

This dispute between the workmen and the Management of Senior Divisional Personnel Officer, Southern Railway, Tiruchirapalli arises out of a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 by the Government of Tamil Nadu in its Order No. L. 41012/23/88-D, II(B), dated 4-1-1989 of the Ministry of Labour for adjudication of the following issue :

"Whether the action of the acting Sr. Divisional Personnel Officer, Southern Railway, Tiruchirapalli in terminating the services of their workmen S/Shri K. Kaliyamurthy, D. Kaliaperumal, M. Thangaraj and M. Paramasivam w.e.f. 20-2-1986 is justified ? If not, to what relief the said workmen are entitled to ?"

2. Parties were served with summons for the hearing on 13-2-1989

3. Today, when the dispute was called, all the four workmen were absent and no representation was made on their behalf. Management files memo of appearance. It is seen that the 2-A dispute pending before Assistant Labour Commissioner (Central-I) by his order dated 16-6-1988 has communicated matter is closed. It seems they have no interest. Hence Industrial Dispute is dismissed. Award passed accordingly.

Dated this 13th day of February, 1989.

THIRU K. NATARAJAN, Presiding Officer  
[No. L-41012/23/88-D, II(B)]  
HARI SINGH, Desk Officer

